



PUBLIC NOTICE

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AUCTION OF ADVANCED WIRELESS SERVICES LICENSES SCHEDULED FOR JUNE 29, 2006

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66

AU Docket No. 06-30

Report No. AUC-06-66-B (Auction No. 66)

By the Commission: Chairman Martin and Commissioner Tate issuing separate statements;
Commissioners Capps and Adelstein concurring and issuing separate statements.

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Commission announces the procedures, minimum opening bids, and reserve price for the upcoming auction of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”) scheduled for June 29, 2006 (Auction No. 66).¹ On January 31, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,² the Wireless Telecommunications Bureau (“Bureau”) released a public notice seeking comment on a reserve price and minimum opening bid amounts and the procedures to be used in Auction No. 66.³ Interested parties submitted 54 comments and 16 reply comments in response to the *Auction No. 66 Comment Public Notice* as well as a number of *ex parte* or late-filed submissions.⁴

2. In the *Auction No. 66 Comment Public Notice*, the Bureau proposed to include all 1,122 AWS-1 licenses in a single auction using the Commission’s standard simultaneous multiple-round (“SMR”) auction format.⁵ At the same time, the Bureau sought comment on the feasibility and desirability of allocating the AWS-1 licenses among two auctions, run concurrently, with one of the auctions using the standard SMR format and the other using the Commission’s package bidding format

¹ AWS is the collective term used for new and innovative fixed and mobile terrestrial wireless applications using bandwidth that is sufficient for the provision of a variety of applications including those using voice and data (such as Internet browsing, message services, and full-motion video) content. For additional information on AWS in general and the AWS-1 bands in particular, *see* Section I.A.1. “Background of Proceeding,” *infra*.

² 47 U.S.C. § 309(j)(3)(E)(i)(requirement to seek comment on proposed auction procedures); *see also* 47 U.S.C. § 309(j)(4)(F)(authorization to prescribe reserve price or minimum bid).

³ “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures,” *Public Notice*, 21 FCC Rcd 794 (2006) (“*Auction No. 66 Comment Public Notice*”).

⁴ A listing of parties that filed comments, reply comments and *ex parte* or late-filed submissions may be found in Attachment B. Parties will be identified in this Public Notice by their abbreviated name as indicated in Attachment B.

⁵ *Auction No. 66 Comment Public Notice* at 1, 4-5. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Bidding generally remains open on all licenses until bidding stops on every license.

(“SMR-PB”).⁶ Based on the record and the particular circumstances of the auction of AWS-1 licenses, the Bureau, as described in more detail below, will include all 1,122 AWS-1 licenses in a single auction using the Commission’s standard SMR format, as proposed.⁷ Package bidding will not be used in Auction No. 66.

3. The Bureau also proposed in the *Auction No. 66 Comment Public Notice* to withhold certain information on bidder interests, bids, and bidder identities that typically has been revealed prior to and during past Commission auctions.⁸ The proposal was made in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of an SMR auction may be enhanced if such information is withheld until after the close of the auction.

4. As discussed in detail below, taking into account concerns raised in the record, we have decided to modify our proposal.⁹ First, consistent with a suggested compromise between the proposal and our past practice that was the subject of extensive comment in the record, we will withhold certain information unless it appears that the auction will be sufficiently competitive that any anti-competitive behavior addressed by the original proposal would be unlikely to be successful.¹⁰ To gauge the likely level of competition in this upcoming auction, we will evaluate the level of prospective bidders’ bidding eligibility. Specifically, if all the bidders’ bidding eligibility, measured in bidding units (subject to a cap on the amount of any one bidder’s eligibility) divided by all licenses in the auction, measured in bidding units is equal to or greater than three, we believe the auction will be sufficiently competitive. For the purposes of determining the modified eligibility ratio, the bidding eligibility of any one bidder may be no more than 50 percent of the bidding units of all licenses in the auction. If the modified eligibility ratio is three or greater, the likely level of competition should be sufficient to make anti-competitive outcomes difficult to sustain. Second, if the modified eligibility ratio is less than three and, therefore, certain information is withheld, we will follow the original proposal with two changes: (1) we will release each bidder’s eligibility and upfront payment made prior to the start of the auction; and (2) we will release all gross bids for each license (including the losing bids) after each round, but not bidder identities. We believe this compromise provides bidders with additional information regarding license valuations without compromising the proposal’s goal of reducing the potential for anti-competitive outcomes.

5. Pursuant to these procedures, license selection information will be withheld, at least initially. Therefore, to enable applicants to comply with the Commission’s anti-collusion rules, each applicant with a short-form application to participate in a pending auction will receive a letter that lists the applicants in Auction No. 66 that have applied for licenses in any of the same geographic areas as the applicant, once the Bureau has conducted its initial review of applications to participate in Auction No. 66.¹¹

⁶ Under the Commission’s package bidding rules, bidders would be able to place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them.

⁷ See Section IV.A.1. “Simultaneous Multiple Round Auction,” *infra*.

⁸ *Auction No. 66 Comment Public Notice* at 2, 6-7.

⁹ See Section IV.A.2. “Information Available to Bidders Before and During the Auction,” *infra*.

¹⁰ *Id.*

¹¹ The list will identify the Auction No. 66 applicant(s) by name but will not list the license selections of the Auction No. 66 applicant(s). As in past auctions, additional information regarding applicants in Auction No. 66 that is needed to comply with section 1.2105(c), *e.g.*, the identities of controlling interest in the applicant and of ownership interests greater than ten percent (10%), will be available through the publicly accessible on-line short-form application database. See *id.*

6. Furthermore, the *Auction No. 66 Comment Public Notice* proposed an aggregate reserve price of \$1,029,534,343.20 for all AWS-1 licenses in order to implement a Congressional mandate to recover estimated relocation costs for government incumbent operators in the lower (1710-1755 MHz) AWS-1 spectrum band.¹² By law, the Commission cannot conclude any auction of statutorily-defined eligible frequencies if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation costs of eligible federal entities assigned to the frequencies.¹³ The lower half of the frequencies covered by AWS-1 licenses, 1710-1755 MHz, are eligible frequencies.¹⁴ Accordingly, the Commission will cancel the auction if the winning bids net of applicable discounts at the end of bidding that are attributable to such spectrum are less than 110 percent of the total estimated relocation costs, or \$1,029,534,343.20.¹⁵ Given that one-half of the frequencies authorized for use by each license are CSEA eligible frequencies, one-half of each winning bid, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of tribal lands bidding credits), will be counted toward meeting this reserve price. Therefore, the winning bids (net of bidding credits) in the auction must total at least approximately \$2.06 billion in order for the Commission to conclude the auction and award the licenses.

1. Background of Proceeding

7. Growth in demand for mobile wireless services, coupled with the rise of the Internet and greater broadband availability, have increased the need for additional spectrum and advanced technologies capable of providing advanced wireless services, including wireless Internet access and other high-speed information and entertainment services. Enhancements to current wireless network technologies, as well as the development of new technologies, are continuing to improve and expand the deployment of wireless broadband.¹⁶ These new technologies are more advanced than analog cellular (first generation, or 1G) and digital cellular (second generation or 2G), and are often labeled 2.5G, 3G, 4G, and so on.¹⁷ Mobile telephone carriers have recently begun to deploy significantly faster broadband technologies on their mobile cellular networks, and many have announced plans to launch or expand these technologies further in the future.

8. In order to facilitate the rapid deployment of broadband technologies, the Commission has allocated spectrum to meet the demand for advanced wireless services. In the *Second Report and Order* in ET Docket No. 00-258, the Commission allocated the 1710-1755, 2110-2150 and 2150-2155 MHz

¹² See Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in various sections of Title 47 of the United States Code) (“CSEA”), § 202 (codified at 47 U.S.C. § 923(g)(2)).

¹³ *Id.*, § 203(b) (Section 203(b) amended Section 309(j) by adding at the end a new paragraph (15)).

¹⁴ *Id.*, § 202.

¹⁵ *Auction No. 66 Comment Public Notice* at 2, 14. CSEA, § 203(b).

¹⁶ See Report, Wireless Broadband Access Task Force, GN Docket No. 04-163 (Feb. 2005).

¹⁷ Although AWS is commonly associated with so-called third generation (“3G”) applications and has been predicted to build on the success of such current-generation commercial wireless services as cellular and broadband Personal Communication Services, the services ultimately provided by AWS licensees are limited only by the Fixed and Mobile designation of the spectrum allocated for AWS and the service rules adopted for the bands. The International Telecommunication Union (ITU) has defined 3G network technologies as those that can offer maximum data transfer speeds of 2 megabits per second (Mbps) from a fixed location, 384 kbps at pedestrian speeds, and 144 kbps at traveling speeds of 100 kilometers per hour. The term “2.5G” is often used to describe the interim technologies that carriers have used to migrate from their 2G technologies of CDMA, TDMA, GSM, and iDEN to 3G technologies. See Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 05-71, *Tenth Report*, 20 FCC Rcd 15908, 15951 n. 252 (2005) (“*Tenth CMRS Competition Report*”).

bands for AWS-1 and combined these latter two bands into a single 45-megahertz allocation (*i.e.*, 2110-2155 MHz).¹⁸ The Commission subsequently adopted service rules for AWS in these bands, including application, licensing, operating and technical rules.¹⁹

9. Making this spectrum available requires relocating incumbent operations, both Federal Government (“Government”) and non-Federal Government (“non-Government”). Relocation of Government operations is subject to CSEA.²⁰ For non-Government operations, the Commission’s *Emerging Technologies* proceeding adopted a relocation policy designed to allow early entry for new technology providers into reallocated spectrum by allowing providers of new services to negotiate financial arrangements for reaccommodation of incumbent licensees.²¹ This policy was also designed to allow gradual relocation of incumbents during which, as the new entrant deployed individual sites throughout its geographic license area over time, the new entrant was obligated to relocate incumbent facilities on a link-by-link basis (in the case of microwave facilities), based on an interference analysis.

¹⁸ See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Second Report and Order*, 17 FCC Rcd 23193 (2002) (“*AWS Allocation Second Report and Order*”). In addition to the spectrum located in the 1710-1755 and 2110-2155 MHz bands, the Commission has designated spectrum in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands for AWS use (“AWS-2”). See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720 (2004). And the Commission has allocated an additional 20 MHz of spectrum at 2155-2175 MHz suitable for AWS uses adjacent to the upper 45 megahertz of AWS-1. See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order*, 20 FCC Rcd 15866 (2005) (“*AWS Eighth Report and Order*” and “*AWS Fifth Notice*”). See generally ET Docket No. 00-258 and ET Docket No. 95-18.

¹⁹ See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, WT Docket No. 02-353, 18 FCC Rcd 25162 (2003); *modified by Order on Reconsideration*, 20 FCC Rcd 14058 (2005) (codified at 47 C.F.R. Part 27, Subpart L) (“*AWS Service Rules Order*”). The Commission has also proposed service rules for the AWS-2 spectrum. See Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, *Notice of Proposed Rule Making*, 19 FCC Rcd 19263 (2004) (“*AWS-2 Service Rules NPRM*”).

²⁰ See *infra* paras. 25-26, 30-31.

²¹ See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994); *aff’d Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, “*Emerging Technologies proceeding*”). See also *Teledesic, LLC v. FCC*, 275 F.3d 75 (D.C. Cir. 2001) (affirming modified relocation scheme for new satellite entrants to the 17.7 – 19.7 GHz band). See also Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825 (1996); *Second Report and Order*, 12 FCC Rcd 2705 (1997); *Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 13999 (2000) (collectively, “*Microwave Cost Sharing proceeding*”).

2. Licenses to be Auctioned

10. Auction No. 66 will offer 1,122 licenses: 36 Regional Economic Area Grouping (“REAG”) licenses, 352 Economic Area (“EA”) licenses, and 734 Cellular Market Area (“CMA”) licenses.²²

11. The following table describes the AWS-1 licenses that will be offered in Auction No. 66:

Block	Frequency Bands (MHz)	Total Bandwidth	Geographic Area Type	No. of Licenses
A	1710-1720 / 2110-2120	20 MHz	CMA	734
B	1720-1730 / 2120-2130	20 MHz	EA	176
C	1730-1735 / 2130-2135	10 MHz	EA	176
D	1735-1740 / 2135-2140	10 MHz	REAG	12
E	1740-1745 / 2140-2145	10 MHz	REAG	12
F	1745-1755 / 2145-2155	20 MHz	REAG	12

12. A complete list of the AWS-1 licenses available in Auction No. 66 is also included in Attachment A of this Public Notice.

B. Rules and Disclaimers

1. Relevant Authority

13. Prospective applicants must familiarize themselves thoroughly with the Commission’s general competitive bidding rules set forth in Title 47, Part 1, of the Code of Federal Regulations, including recent amendments and clarifications;²³ rules relating to the Advanced Wireless Services and emerging technologies contained in Title 47, Parts 27 and 101, of the Code of Federal Regulations; and

²² The CMA licenses consist of both Metropolitan Statistical Area (“MSA”) and Rural Service Area (“RSA”) licenses. MSAs and RSAs were originally used to license cellular service. *See* 47 C.F.R. § 22.909. The Commission refined and used these areas for licensing the Lower 700 MHz band. *See* 47 C.F.R. § 27.6(c)(2). For purposes of the 1710-1755 and 2110-2155 MHz bands, the Commission stated that it will use the same MSAs and RSAs used for licensing the Lower 700 MHz band. *AWS-1 Service Rules Order*, 18 FCC Rcd at 25176 n.83. CMAs cannot be combined to form EAs because several CMAs cross EA borders.

²³ *See, e.g.*, Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006) (“*CSEA/Part 1 Report and Order*”), petitions for reconsideration pending; Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003) (“*Order on Reconsideration of the Part 1 Fifth Report and Order*”). The Commission has recently released a Further Notice of Proposed Rulemaking in the latter proceeding, in which it considers whether to modify its general competitive bidding rules governing benefits reserved for designated entities (*i.e.*, small businesses, rural telephone companies, and businesses owned by women and minorities). *See* Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Further Notice of Proposed Rule Making*, 21 FCC Rcd 1753 (2006) (“*CSEA/Part 1 Designated Entity FNPRM*”).

rules relating to applications, practice and procedure contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, “terms”) contained in this Public Notice and the Commission’s decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.²⁴

14. The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (“BCPI”), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>.²⁵

2. Prohibition of Collusion; Compliance with Antitrust Laws

15. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission’s rules prohibit applicants competing for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).²⁶ In Auction No. 66, the rule would apply to any applicants bidding for the same CMA, EA, or REAG. The rule would also apply to applicants bidding for licenses in overlapping CMAs, EAs, and REAGs. For example, assume that one applicant applies for an REAG and a second applicant applies for an EA covering any area within that REAG. The two entities will have applied for licenses covering the same geographic areas and would be precluded from communicating with each other under the rule. In addition, the rule would preclude applicants that apply to bid for all markets from communicating with all other applicants. Thus, applicants that have applied for the same markets (unless they have identified each other on their FCC

²⁴ See, e.g., Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Second Report and Order*, 9 FCC Rcd 2348 (1994) (*Competitive Bidding Second Report and Order*); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) (“*Part 1 Fifth Report and Order*”); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”) (amending the anti-collusion rule, which is codified at 47 C.F.R. §1.2105(c)); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002) (amending Section 1.2110 of the Commission’s rules); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005) (“*Second Order on Reconsideration of the Fifth Report and Order*”) (further amending Section 1.2110 to exempt the gross revenues of the affiliates of a rural telephone cooperative’s officers and directors from attribution to the applicant and adopting other modifications to the competitive bidding rules); *CSEA/Part 1 Report and Order*.

²⁵ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 06-238 for the *Auction No. 66 Comment Public Notice*, or FCC 06-47 for this Public Notice).

²⁶ 47 C.F.R. § 1.2105(c)(1); 47 C.F.R. § 1.2105(a)(2)(viii). See also *Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.²⁷ This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.²⁸ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²⁹ (As described in Section IV.A.2., below, information concerning applicants' license selections may not be made public during the auction. If that occurs, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for any of the same geographic areas that it has selected in its short form application.³⁰)

16. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.³¹

17. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.³² Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering firm or consulting firm), a violation similarly could occur.³³ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.³⁴ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.³⁵ Moreover, the Commission has found a

²⁷ See, *e.g.*, "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders," *Public Notice*, DA 96-1460 (rel. August 28, 1996).

²⁸ 47 C.F.R. § 1.2105(c)(1).

²⁹ See, *e.g.*, Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626, 18628 4, n. 19 (2004), application for review pending (collusion rule applies to "applicants" regardless of whether they are qualified to bid); Letter to Robert Pettit, Counsel for Noverr Publishing, Inc., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 10080 (2000) (declining to except an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

³⁰ See Section IV.A.2. "Information Available to Bidders Before and During the Auction," *infra*, especially ¶ 158.

³¹ 47 C.F.R. § 1.2105(c)(7)(i).

³² *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

³³ See Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA -155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless MO&O*").

³⁴ *Id.*

³⁵ See, *e.g.*, Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 20 FCC Rcd 14648 (2005) (finding apparent violation of anti-collusion rule (continued...))

violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"³⁶ and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."³⁷ Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."³⁸ Auction participants are hereby placed on notice that public disclosure of information relating to bidder interests, bids and bidder identities that typically has been revealed prior to and during past Commission auctions may violate the anti-collusion rule.³⁹ Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

18. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.⁴⁰ If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.⁴¹

19. By electronically submitting its short-form application, each applicant certifies its compliance with Section 1.2105(c). However, we caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.⁴² The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."⁴³ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁴⁴

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where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

³⁶ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

³⁷ Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

³⁸ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

³⁹ Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341, 347-8 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

⁴⁰ 47 C.F.R. § 1.2105(c)(7)(i).

⁴¹ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995) ("Anti-Collusion Public Notice").

⁴² *Nevada Wireless MO&O*, 13 FCC Rcd at 11978 ¶ 13.

⁴³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

20. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁴⁵ Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁴⁶ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.⁴⁷ The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.⁴⁸ Similarly, the Bureau has long reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."⁴⁹ To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation.⁵⁰ If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁵¹

21. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.⁵² Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or

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⁴⁴ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁴⁵ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) *citing* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”).

⁴⁶ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁴⁷ The Commission has cited a number of examples of such anticompetitive behavior. See, e.g., Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994).

⁴⁸ Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994); see also *Anti-Collusion Public Notice*.

⁴⁹ See *Anti-Collusion Public Notice*.

⁵⁰ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵¹ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵² 47 C.F.R. § 1.65.

bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁵³

22. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.⁵⁴

23. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment G. These documents are available on the Commission's auction anti-collusion web page.⁵⁵

3. Incumbency Issues

24. The AWS-1 bands are now being used for a variety of Government and non-Government services. The 1710-1755 MHz band is currently a Government band.⁵⁶ The 2110-2150 MHz band is used by private (including state and local governmental public safety services) and common carrier fixed microwave services.⁵⁷ The 2150-2155 MHz band is currently used by the Broadband Radio Service ("BRS").⁵⁸

⁵³ 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

⁵⁴ 47 C.F.R. § 1.2107(d).

⁵⁵ <http://wireless.fcc.gov/auctions/anticollusion>

⁵⁶ In the Omnibus Budget Reconciliation Act of 1993 ("OBRA-93"), Congress directed the Secretary of Commerce to identify at least 200 megahertz of spectrum below 5 GHz for transfer to non-Federal services. 47 U.S.C. § 923. NTIA identified the band 1710-1755 MHz for transfer, with certain Federal operations to remain protected indefinitely. *See* Spectrum Reallocation Final Report, Response to Title VI Omnibus Budget Reconciliation Act of 1993, NTIA Special Publication 95-32, at App. E and page F-4 (Feb. 1995). Subsequently, NTIA concluded that most of the protected Federal operations could relocate or modify their operations to allow reallocation of the band for AWS. *See* NTIA Report, "An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands," at 1-2 (July 22, 2002) ("*NTIA AWS Assessment*") (available at <http://www.ntia.doc.gov/ntiahome/threereg/va7222002/3Gva072202web.htm>). The Commission sought comment on the *NTIA AWS Assessment*. FCC Seeks Comment on the National Telecommunications and Information Administration's Report, An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands, ET Docket No. 00-258, *Public Notice*, 17 FCC Rcd 14390 (2002). The *NTIA AWS Assessment* was incorporated into Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Fourth Notice of Proposed Rulemaking*, 18 FCC Rcd 13235 (2003).

⁵⁷ *See* Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Notice of Proposed Rule Making*, 16 FCC Rcd 596, 617-18 (2001).

⁵⁸ *See AWS Allocation Second Report and Order*, 17 FCC Rcd at 23208-13 ¶¶ 34-41. The Commission has decided to clear BRS from the 2150-2155 MHz band as part of a fundamental restructuring of the service. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 14165, 14177-78 ¶¶ 23-24 (2004) ("*BRS Report and Order*").

25. *Relocation of Government Incumbents; Spectrum Relocation Fund.* The 1710-1755 MHz spectrum is covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation costs of incumbent federal entities.⁵⁹ Specifically, the CSEA established a Spectrum Relocation Fund (“SRF”), to which the cash proceeds attributable to “eligible frequencies” in the AWS-1 license auction will be deposited.⁶⁰

26. CSEA also prohibits the Commission from concluding any auction of eligible frequencies if the total cash proceeds attributable to such spectrum are less than 110 percent of the estimated relocation costs provided to the Commission by the National Telecommunications and Information Administration (“NTIA”).⁶¹ NTIA has collected estimates of the relocation costs for the “eligible frequencies” in the AWS-1 band. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission of the estimated relocation costs and timelines for relocation of eligible federal entities assigned to frequencies from 1710 to 1755 MHz.⁶² NTIA reported that the total estimated relocation costs equal \$935,940,312. More information is available at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>.

27. *Relocation of Non-Government Incumbents.* The Commission is in the process of determining how to apply the policies adopted in the *Emerging Technologies* proceeding⁶³ to the relocation of incumbent fixed microwave and BRS licensees in the 2110-2150 and 2150-2155 MHz bands, respectively. In the *Fifth Notice of Proposed Rule Making* (“AWS Fifth Notice”) in ET Docket No. 00-258, the Commission is seeking comment on the specific relocation and cost-sharing procedures applicable to BRS operations in the 2150-2160/62 MHz band,⁶⁴ which the Commission recently decided will be relocated to the newly restructured 2495-2690 MHz band.⁶⁵ In the *AWS Fifth Notice*, the Commission is also seeking comment on cost-sharing obligations and procedures associated with relocation obligations for the 2110-2155 MHz band.⁶⁶ In doing so, the *AWS Fifth Notice* also referenced

⁵⁹ CSEA, § 202.

⁶⁰ *Id.*, §§ 201-209. Eligible frequencies comprise four bands specified in CSEA (the 216-220 MHz, 1432-1435 MHz, 1710-1755 MHz and 2385-2390 MHz bands), as well as any other band of frequencies reallocated from federal use to non-federal use after January 1, 2003, and assigned by the Commission through competitive bidding. *Id.*, § 202. Bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95-32 (1995), are excluded. *Id.*

⁶¹ *Id.*, § 203(b). CSEA also requires that, at the same time, NTIA submit for approval its estimate of relocation costs and the timelines for relocation to the Senate Committees on Appropriations, and Commerce, Science, and Transportation, the House of Representatives Committees on Appropriations and Energy and Commerce, and the Comptroller General. Unless disapproved by these committees within 30 days, the estimate “shall be approved.” *Id.*, § 202.

⁶² See Letter from Michael D. Gallagher, Assistant Secretary for Communications and Information, United States Department of Commerce, to Kevin J. Martin, Chairman, Federal Communications Commission, dated December 27, 2005.

⁶³ See *supra* note 20.

⁶⁴ See generally *AWS Fifth Notice*, 20 FCC Rcd 15866.

⁶⁵ See *BRS Report and Order*, 19 FCC Rcd 14165, 14183-84 ¶¶ 37-38. See also, Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, IB Docket No. 02-364, ET Docket No. 00-258, *Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13386 (2004) (“*Big LEO Spectrum Sharing Order*”).

⁶⁶ See *AWS Fifth Notice*, 20 FCC Rcd at 15885-90 ¶¶ 43-52.

the Commission's earlier request in the *AWS-2 Service Rules NPRM* for comments on the appropriate procedures for apportioning relocation costs among multiple AWS licensees in the 2110-2150 MHz band.⁶⁷ The Commission is also currently considering petitions for reconsideration that raise issues concerning the conditions under which the 2495-2500 MHz band would be available to BRS and the suitability of that spectrum for BRS operations.⁶⁸

4. Protection of Incumbent Government and Non-Government Operations

28. AWS licensees must comply with the technical and operational rules set forth in 47 C.F.R. §§ 27.50-27.66 and 27.1131-27.1135. The latter set of rules describes the procedures AWS licensees must follow to protect co-channel and adjacent channel incumbent Government and non-Government operations from interference. Such operations requiring protection include: Part 101 fixed-point-to-point facilities in the 2110-2155 MHz band; BRS operations in the 2150-2155 MHz band; Broadcast Auxiliary Service ("BAS") and Cable Television Radio Service ("CARS") operations in the 2025-2110 MHz band; Department of Defense ("DOD") communications systems in the 1710-1755 MHz band at 16 protected facilities nationwide; non-DOD Federal Government systems operating in the 1710-1755 MHz and 1755-1761 MHz bands; radiosonde receivers operating in the Meteorological Aids Service in the 1675-1700 MHz band; and meteorological-satellite earth receivers operating in the Meteorological-Satellite Service in the 1675-1710 MHz band. The following paragraphs generally describe procedures that AWS licensees must follow to protect incumbent Government and non-Government operations.

29. *The 1710-1755 MHz band.* According to NTIA, this spectrum is used by the Federal Government for both military and non-military operations.⁶⁹ Sixteen DOD facilities in the country are classified as "protected facilities," and various types of systems operate at these locations. AWS licensees must protect systems operating at these facilities from interference until such systems are relocated to other spectrum.⁷⁰ These restrictions shall apply until such time as the relocation of the Federal systems has been completed, and indefinitely in the case of systems at the Yuma, Arizona, and Cherry Point, North Carolina, locations.⁷¹ Furthermore, AWS licensees will be required to accept any interference received from operations at the 16 facilities. Such interference could occur at large distances outside the facilities' operating radii due to airborne operations within the radii.

30. The CSEA permits the Commission to grant commercial licenses in these bands prior to relocation of federal government operations and the termination of a federal entity's authorization.⁷²

⁶⁷ *Id.* at 15886 ¶ 45, citing *AWS-2 Service Rules NPRM*, 19 FCC Rcd 19263, 19282-84 ¶¶ 46-49.

⁶⁸ *See, e.g.*, Petition for Reconsideration filed by Sprint Corporation, Nextel Corporation, and Wireless Communications Association International, Inc., IB Docket No. 02-364 (arguing that 2495-2500 MHz is not suitable relocation spectrum because spectrum must be shared with other services); Petition for Reconsideration filed by Globalstar Corporation, IB Docket No. 02-364 (arguing that BRS operations in the 2495-2500 MHz band should be limited to the top 35 metropolitan statistical areas).

⁶⁹ *See* NTIA website at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>.

⁷⁰ *See* 47 C.F.R. § 27.1134(a). Specifically, AWS licensees must protect Government stations within the "radii of operation" of the 16 facilities. A table indicating the "radius of operation" for each of the 16 facilities is included in 47 C.F.R. § 27.1134(a).

⁷¹ Operations will continue indefinitely and on a primary basis at the Cherry Point and Yuma facilities. 47 C.F.R. § 27.1134(a)(1). In addition, airborne and military test range operations as well as Precision-Guided-Munitions (PGM) systems will continue to use the 1710-1720 MHz band on a primary basis, and AWS licensees will be required to protect these operations, until the systems are relocated to other spectrum, or PGM inventory is exhausted, whichever is earlier. 47 C.F.R. § 27.1134(a)(2).

⁷² 47 U.S.C. § 309(j)(15)(C) (codifying CSEA §203). Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an (continued....)

Until such time as the Government licensees have relocated to other spectrum, or NTIA de-authorizes an operation pursuant to CSEA, AWS operators shall be required to protect non-DOD Government systems operating in the 1710-1755 and 1755-1761 MHz bands in accordance with the provisions set forth in Section 27.1134(b) of the Commission's rules.⁷³ Information on the locations of these stations can be found at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>. Points of contact for the government agencies involved can be found at http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf/1710-1755MHz_points_of_contact.pdf.

31. AWS licensees operating fixed stations in the 1710-1755 MHz band, if notified that such stations are causing interference to radiosonde receivers operating in the Meteorological Aids Service in the 1675-1700 MHz band or meteorological-satellite earth receivers operating in the Meteorological-Satellite Service in the 1675-1710 MHz band, shall be required to modify the stations' location and/or technical parameters as necessary to eliminate the interference.⁷⁴

32. *The 2110-2155 MHz Band.* Fixed point-to-point microwave systems authorized under Part 101 of the Commission's rules will maintain primary status in the 2110-2150 MHz band unless and until an AWS or other emerging technology licensee requires use of the spectrum.⁷⁵ AWS licensees are required, prior to initiating operations from any base or fixed station, to coordinate their frequency usage with co-channel and adjacent channel incumbent Part 101 fixed-point-to-point microwave licensees operating in the 2110-2150 MHz band.⁷⁶ Similarly, BRS operations in the 2150-2160/62 MHz band will be relocated to other spectrum.⁷⁷ Until that occurs, AWS licensees, prior to initiating operations from any base or fixed station, must coordinate their frequency usage with co-channel and adjacent channel incumbent BRS licensees operating in the 2150-2160 MHz band.⁷⁸

33. AWS licensees operating in the 2110-2155 MHz band must protect previously licensed BAS and CARS operations in the adjacent 2025-2110 MHz band. In satisfying this requirement AWS licensees must, before constructing and operating any base or fixed station, determine the location and

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alternative technology, the NTIA shall terminate the entity's authorization and notify the Commission that the entity's relocation has been completed. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by the Director of the Office of Management and Budget under Section 118(d)(2)(B). 47 U.S.C. § 923(g)(6).

⁷³ 47 C.F.R. § 27.1134(b).

⁷⁴ See 47 C.F.R. §§ 27.1134(c), 27.1135.

⁷⁵ Emerging technology services in this band are AWS and the Mobile Satellite Service (including auxiliary terrestrial components, or "ATC"). See 47 C.F.R. §§ 101.69, 101.79(a).

⁷⁶ See 47 C.F.R. §§ 27.1131, 24.237.

⁷⁷ See *BRS Report and Order*, 19 FCC Rcd 14165, 14177-78, 14183-84 ¶¶ 23-24, 37-38, petitions for reconsideration pending. See also *AWS Eighth Report and Order*; *Big LEO Spectrum Sharing Order*. A five-megahertz portion of the 2110-2155 MHz band is currently used for Broadband Radio Service operations in the 2150-2160/62 MHz band. The Commission is currently considering relocation procedures that AWS-1 licensees will follow when relocating incumbent BRS licensees from the 2150-2160/62 MHz portion of the band.

⁷⁸ See 47 C.F.R. § 27.1132. See also *AWS Service Rules Order*, 18 FCC Rcd 25162, 25206 ¶ 115, petition for reconsideration pending. In the event that AWS and BRS licensees cannot reach agreement in coordinating their facilities, they may seek the assistance of the Commission, and the Commission may then, at its discretion, impose requirements on either or both parties. 47 C.F.R. § 27.1132. See also *AWS Eighth Report and Order* (seeking comment on interference standard for BRS relocation trigger).

licensee of all BAS or CARS stations authorized in their area of operation, and coordinate their planned stations with those licensees.⁷⁹

34. The National Aeronautics and Space Administration (“NASA”) operates the Deep Space Network (“DSN”) in the 2110–2120 MHz band at Goldstone, California. NASA will continue its operations of high power transmitters (nominal EIRP of 105.5 dBW with EIRP up to 119.5 dBW used under emergency conditions) in this band at this location.⁸⁰ AWS licensees must accept any interference received from the Goldstone DSN facility in this band.⁸¹

a. International Coordination

35. Operations in the 1710-1755 and 2110-2155 MHz bands must not cause harmful interference across the borders with Mexico and Canada. Until such time as agreements between the United States, Mexico and Canada become effective, the same technical restrictions at the border that are adopted for operation between geographic service areas will apply, to the extent they are not in violation of current bilateral agreements and arrangements.⁸² When interim arrangements or agreements between the United States, Mexico and Canada are final and become effective, licensees in the 1710-1755 and 2110-2155 MHz bands must comply with these agreements. In addition, if these agreements are modified in the future, licensees in the 1710-1755 and 2110-2155 MHz bands must comply with these modifications.

b. Quiet Zones

36. Advanced Wireless Services licensees must protect the radio quiet zones set forth in the Commission’s rules.⁸³ Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission’s rules.⁸⁴

5. Due Diligence

37. **We caution potential applicants formulating their bidding strategies to investigate and consider the extent to which AWS frequencies are occupied.** As stated above, operations in the AWS-1 bands must be protected and/or relocated to available frequencies typically in higher bands or to other media. These limitations may restrict the ability of AWS geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and relocation requirements, and applicable Commission rules, orders and any pending proceedings related to the service, in order to

⁷⁹ See 47 C.F.R. § 27.1133.

⁸⁰ See 47 C.F.R. § 27.1134(d).

⁸¹ See Section 27.50 of the Commission’s rules, which states in pertinent part: “A licensee operating a base or fixed station utilizing a power of more than 1640 watts EIRP must coordinate such operations in advance with all Government and non-Government satellite entities in the 2025–2110 MHz band.” 47 C.F.R. § 27.50.

⁸² Current agreements and coordination arrangements between the United States and Canada or Mexico may be found on the Commission’s website under <http://www.fcc.gov/ib/sand/agree/welcome.html>. Boundary limits using a predicted or measured 47 dBmV/m field strength limit for all 2110-2155 MHz transmissions addresses co-channel interference. Adjacent channel interference is addressed by $43 + 10 \log_{10}(P)$ out-of-band emission limit for all transmissions, originating in both the 1710-1755 and 2110-2155 MHz bands.

⁸³ See 47 C.F.R. § 1.924.

⁸⁴ See *id.*

make reasoned, appropriate decisions about their participation in Auction No. 66 and their bidding strategy.

38. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the AWS-1 licenses in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in the Advanced Wireless Services subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

39. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 66 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction No. 66 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

40. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 66. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 66. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

41. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction No. 66. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

42. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 66.

43. Applicants may obtain information about non-Federal Government incumbent licenses that may have an effect on availability of licenses in Auction No. 66 through the Bureau's licensing databases on the World Wide Web at <http://wireless.fcc.gov/uls>. Part 101 fixed point-to-point microwave licenses can be identified by searching on the "Microwave Site-Based" service group and limiting the search to the frequency range 2110 MHz to 2150 MHz. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen or by going to the Universal Licensing System ("ULS") support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480-3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 7:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

44. To further assist potential bidders in determining the scope of the new AWS entrants' relocation obligations in the 2150-2155 MHz band, the Commission ordered BRS licensees in the 2150-2160/62 MHz band to submit information on the locations and operating characteristics of BRS systems in that band.⁸⁵ That information may also be found on ULS at <http://wireless.fcc.gov/uls>. To obtain the information, potential bidders should use the ULS Advanced Application Search to search for modifications filed in the BR Radio Service between November 30, 2005, and December 27, 2005. Each application will need to be viewed to determine if it is a BRS Channel 1, 2/ 2A Notification. Additionally, the Commission has sought Office of Management and Budget ("OMB") approval under the Paperwork Act of 1995 to collect additional information on the locations and operating characteristics of BRS systems in that band.⁸⁶ If OMB approves this information collection, the Commission intends to give public notice announcing the deadline date for BRS licensees to file this additional data on ULS.

45. Information on the locations of non-DOD Government stations can be found at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>; points of contact for the Government agencies involved can be found at http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf/1710-1755MHz_points_of_contact.pdf.

46. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

47. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described below in Section I.B.8.

6. Use of Integrated Spectrum Auction System

48. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 66 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

7. Bidder Alerts

49. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 66 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

⁸⁵ See "Licensees of Broadband Radio Service Channels 1 and/or 2/2A Must File Site and Technical Data by December 27, 2005," *Public Notice*, 20 FCC Rcd 19273 (2005).

⁸⁶ See Notice of Public Information Collection(s) being Submitted for Review to OMB, 71 FR 9127 (Feb. 22, 2006).

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

50. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 66 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

8. National Environmental Policy Act Requirements

51. Licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act (“NEPA”).⁸⁷ The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission’s NEPA rules for each such facility.⁸⁸ The Commission’s NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁸⁹ The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

1. Auction Date

52. Bidding in Auction No. 66 will begin on Thursday, June 29, 2006, as announced in the *Auction No. 66 Comment Public Notice*.⁹⁰ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

⁸⁷ 47 C.F.R. Ch. 1, Subpart I.

⁸⁸ 47 C.F.R. §§ 1.1305-1.1319.

⁸⁹ See 47 C.F.R. Part 1, Appendix C.

⁹⁰ *Auction No. 66 Comment Public Notice* at 1.

53. Several commenters addressed the date on which bidding in Auction No. 66 will commence. Generally, commenters expressed support for commencing the auction on June 29, 2006.⁹¹ In its support for keeping to that start date, T-Mobile noted that the date coincides with the schedule outlined by CSEA.⁹² A few commenters, however, expressed concern about the start date. For example, MetroPCS and Columbia Capital/MC Ventures suggested additional time may be needed if the final auction procedures significantly differed from the typical auction procedures.⁹³ Verizon Wireless offered that the Bureau should begin the auction two weeks later than originally scheduled, to take into account the Independence Day (July 4th) holiday.⁹⁴

54. We do not find sufficient cause to delay the start of Auction No. 66, and therefore, will commence the competitive bidding as scheduled, i.e., on June 29, 2006. We agree with the majority of the parties who commented on this issue that it is in the public interest to make AWS spectrum available as soon as it is both reasonable and consistent with CSEA. As described in detail elsewhere in this Public Notice, we have decided to proceed with standard, single SMR auction for the AWS-1 licenses. Therefore, the concerns raised by some about time needed to prepare for package bidding are moot. Moreover, we note that bidders have approximately one month to prepare their short-form applications and over two months to prepare their bidding strategies before the auction commences.

55. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Title

56. Auction No. 66 – Advanced Wireless Services (AWS-1)

3. Bidding Methodology

57. As discussed in more detail below, the bidding methodology for Auction No. 66 will be simultaneous multiple round bidding.⁹⁵ The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.⁹⁶ All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

58. Dates and Deadlines

Auction Seminar	April 24, 2006
Short-Form Application (FCC Form 175) Filing Window Opens	April 24, 2006; 12:00 p.m. ET
Short-Form Application (FCC Form 175) Filing Window Deadline ...	May 10, 2006; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	June 1, 2006; 6:00 p.m. ET

⁹¹ T-Mobile Comments at 2-3; Alltel Comments at 1; CTIA Comments at 4; RTG Comments at 9; U.S. Cellular Comments at 4.

⁹² T-Mobile Reply Comments at 1-3.

⁹³ MetroPCS Comments at 3-6; Columbia/MC Comments at 8-9. MetroPCS specifically suggests that the Commission allow a minimum of 60 days between the release of the auction procedures and the short-form application deadline. MetroPCS Comments at 5. MetroPCS added that the additional time would not necessarily require a change in the auction start date; rather, the Bureau could reduce the time between the short-form filing deadline and the auction start. *Id.* at note 11.

⁹⁴ Verizon Wireless Comments at 1.

⁹⁵ See Section IV.A.1. “Simultaneous Multiple Round Auction,” *infra*.

⁹⁶ For additional information regarding ISAS, including sample screen shots, visit the “About ISAS” web page at http://wireless.fcc.gov/auctions/about_isas.

Mock Auction	June 26, 2006
Auction Begins	June 29, 2006

5. Requirements for Participation

59. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), May 10, 2006, following the electronic filing procedures set forth in Attachment D to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, June 1, 2006.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

6. General Contact Information

60. General Contact Information Table

GENERAL AUCTION INFORMATION	FCC Auctions Hotline
General Auction Questions	(888) 225-5322, option two;
Seminar Registration	or (717) 338-2868
	Hours of service: 8:00 a.m. – 5:30 p.m. ET, Monday through Friday
AUCTION LEGAL INFORMATION	Auctions and Spectrum Access Division
Auction Rules, Policies, Regulations	(202) 418-0660
LICENSING INFORMATION	Broadband Division
Service Rules, Policies, Regulations	(202) 418-0200
Licensing Issues, Engineering Issues	
Due Diligence, Incumbency Issues	
TECHNICAL SUPPORT	FCC Auctions Technical Support Hotline
Electronic Filing	(877) 480-3201, option nine; or (202) 414-1250
FCC Auction System	(202) 414-1255 (TTY)
	Hours of service: 8:00 a.m. – 6:00 p.m. ET, Monday through Friday
PAYMENT INFORMATION	FCC Auctions Accounting Branch
Wire Transfers	(202) 418-0578
Refunds	(202) 418-2843 (Fax)
AUCTION BIDDER LINE	Will be furnished only to qualified bidders
FCC COPY CONTRACTOR	Best Copy and Printing, Inc
Additional Copies of	445 12th Street, SW, Room CY-B402
Commission Documents	Washington, DC 20554
	(800) 378-3160
	http://www.bcpweb.com
PRESS INFORMATION	Chelsea Fallon (202) 418-7991

FCC FORMS

(800) 418-3676 (outside Washington, DC)
(202) 418-3676 (in the Washington area)
<http://www.fcc.gov/formpage.html>

ACCESSIBLE FORMATS

Braille, large print, electronic files, or
audio format for people with disabilities

Consumer and Governmental Affairs Bureau
(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

FCC INTERNET SITES

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://wireless.fcc.gov/uls>

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

61. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁹⁷ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁹⁸ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, explained below.⁹⁹ In the second phase of the process, winning bidders file a more comprehensive long-form application.¹⁰⁰

62. Entities seeking licenses available in Auction No. 66 must file a short-form application electronically via the FCC Auction System before 6:00 p.m. ET on May 10, 2006, following the procedures prescribed in Attachment D to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.¹⁰¹ Applicants should read the instructions set forth in Attachment D to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

63. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

⁹⁷ See 47 C.F.R. § 1.2105.

⁹⁸ See *id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁹⁹ See Section III.D. "Upfront Payments – Due June 1, 2006," *infra*.

¹⁰⁰ See 47 C.F.R. § 1.2107.

¹⁰¹ See 47 C.F.R. § 1.2105(a)(2)(v).

64. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Preferences for Small Businesses and Others

1. Size Standards for Bidding Credits

65. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction No. 66, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows:

- A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bid.¹⁰²
- A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bid.¹⁰³

66. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

67. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the applicable eligibility requirement.¹⁰⁴ Applicants considering claiming eligibility as a designated entity in Auction No. 66 should review carefully the recently released *CSEA/Part 1 Designated Entity FNPRM*. The Commission stated in the *CSEA/Part 1 Designated Entity FNPRM* that it intends to complete that proceeding so that any resulting rule modifications will apply to Auction No. 66.¹⁰⁵ In the *CSEA/Part 1 Designated Entity FNPRM*, the Commission tentatively concluded that it should "restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider,'" and sought comment on how to define the elements of such a restriction.¹⁰⁶ The Commission also sought comment on whether to restrict the award of designated entity benefits where an otherwise qualified designated entity has a "material relationship" with a large entity that has a significant interest in communications services.¹⁰⁷ The Commission further proposed that in the event that any designated entity applicants have filed an application to participate in an auction prior to the effective date of any designated entity rule

¹⁰² 47 C.F.R. § 1.2110(f)(2)(i).

¹⁰³ 47 C.F.R. § 1.2110(f)(2)(iii).

¹⁰⁴ 47 C.F.R. §§ 1.2105, 1.2110(b)(1)(i). See Section II.E. "Bidding Credit Revenue Disclosures," *infra*, and Attachment D.

¹⁰⁵ *CSEA/Part 1 Designated Entity FNPRM* at ¶ 1.

¹⁰⁶ *Id.* at ¶¶ 1, 11.

¹⁰⁷ *Id.* at ¶¶ 1, 19.

changes adopted pursuant to the *CSEA/Part 1 Designated Entity FNPRM*, such applicants would be required to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to section 1.2110 of the Commission's rules effective as of the date of the statement.¹⁰⁸ Finally, the Commission noted that under this proposal the Bureau will establish any detailed procedures necessary for making required amendments and announce such procedures by public notice.¹⁰⁹ Accordingly, applicants considering claiming eligibility as a designated entity in Auction No. 66 should monitor further proceedings pursuant to the *CSEA/Part 1 Designated Entity FNPRM* to assure their ability to comply with any changes to the designated entity rules that the Commission may adopt that are applicable to applicants in Auction No. 66.

2. Tribal Lands Bidding Credit

68. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. As discussed in greater detail in Section V.E. of this Public Notice, the Commission will award pro rata tribal lands bidding credits in the event that the sum of all net winning bids at the close of bidding, exclusive of tribal lands bidding credits, is not sufficient funds both to meet the reserve price and to award all eligible applicants full tribal lands bidding credits.¹¹⁰

3. Installment Payments

69. Installment payment plans will not be available in Auction No. 66.

B. License Selection

70. In Auction No. 66, applicants must select the licenses on which they want to bid from the "Eligible Licenses" list. In Auction No. 66, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses. There will be no opportunity to change license selection after the short-form filing deadline.¹¹¹ It is critically important that an applicant confirm its license selections before submitting its short-form application because the FCC Auction System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

C. Disclosure of Bidding Arrangements

71. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.¹¹² Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the

¹⁰⁸ *Id.* at ¶ 21.

¹⁰⁹ *Id.* at ¶ 21, n.54.

¹¹⁰ See Section V.E. "Tribal Lands Bidding Credit," *infra*.

¹¹¹ 47 C.F.R. § 1.2105(b)(2).

¹¹² 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.¹¹³ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.¹¹⁴

72. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.¹¹⁵ While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.¹¹⁶ Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.¹¹⁷

D. Ownership Disclosure Requirements

73. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules.¹¹⁸ Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant.

74. Applicants considering claiming eligibility as a designated entity in Auction No. 66 should carefully monitor the recently initiated rulemaking proceeding concerning the Commission's designated entity rules.¹¹⁹ In the *CSEA/Part 1 Designated Entity FNPRM*, the Commission tentatively concluded that it should "restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider,'" and sought comment on how to define the elements of such a restriction. The Commission also sought comment on whether to restrict the award of designated entity benefits where an otherwise qualified designated entity has a "material relationship" with a large entity that has a significant interest in communications services.¹²⁰ The Commission stated that it intended any changes adopted in this proceeding to apply to AWS licenses to be offered in Auction No. 66.¹²¹ Depending upon the outcome of that proceeding, applicants may be required to disclose additional ownership information in order to comply with any changes to the designated entity rules that the Commission may adopt that are applicable to applicants in Auction No. 66.

¹¹³ 47 C.F.R. § 1.2105(a)(2)(ix).

¹¹⁴ See Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws," *supra*.

¹¹⁵ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

¹¹⁶ See Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws," *supra*.

¹¹⁷ See *id.*

¹¹⁸ 47 C.F.R. § 1.2105 requires the disclosure on the short-form of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112.

¹¹⁹ *CSEA/Part 1 Designated Entity FNPRM* at ¶¶ 1, 11.

¹²⁰ *Id.* at ¶¶ 1, 19.

¹²¹ *Id.* at ¶ 21.

75. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their Form 175 for Auction No. 66 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

E. Bidding Credit Revenue Disclosures

76. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests.¹²² Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their FCC Form 175 short-form applications the gross revenues of each of the following for the preceding three years: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.¹²³ Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years. If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.¹²⁴

77. Applicants considering claiming eligibility as a designated entity in Auction No. 66 should review carefully the recently released *CSEA/Part 1 Designated Entity FNPRM*. In the *CSEA/Part 1 Designated Entity FNPRM*, the Commission tentatively concluded that it should "restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider,'" and sought comment on how to define the elements of such a restriction.¹²⁵ Depending upon the outcome of that proceeding, applicants may be required to disclose additional information regarding gross revenues of related parties in order to comply with any changes to the designated entity rules that the Commission may adopt that are applicable to applicants in Auction No. 66.

78. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.¹²⁶ The following are some common indicia of *de facto* control:

¹²² § 1.2110(b); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27, ¶¶ 59-67.

¹²³ § 1.2110(b).

¹²⁴ The recently adopted *CSEA/Part 1 Report and Order* will modify the procedure by which a consortium that is a winning bidder will apply for a license. *See CSEA/Part 1 Report and Order* at ¶¶ 51-52, petitions for reconsideration pending. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* to understand how the members of the consortia will apply for a license in the event they are winning bidders.

¹²⁵ *CSEA/Part 1 Designated Entity FNPRM* at ¶¶ 1, 11.

¹²⁶ For further guidance on the issue of *de facto* control, see the Commission's affiliation rule at 47 C.F.R. §1.2110(b)(5); *see also Intermountain Microwave*, 12 FCC 2d. 559, 560 (1963), and *Application of Baker Creek* (continued....)

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.¹²⁷

79. Officers and directors of an applicant are also considered to have controlling interest in the applicant.¹²⁸ The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates will be counted in determining small business eligibility.

80. In recent years the Commission has made modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met.¹²⁹ The Commission has also clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.¹³⁰

81. A consortium of small businesses or very small businesses is a "conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business [or] very small business as those terms are defined in the service-specific rules."¹³¹ Thus, each member of a consortium of small or very small businesses that applies to participate in Auction No. 66 must individually meet the definition of small business or very small business adopted by the Commission for the Advanced Wireless Services.¹³² Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business,¹³³ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.¹³⁴

(Continued from previous page) _____
Communications, L.P., for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998).

¹²⁷ See 47 C.F.R. § 1.2110(c)(2)(i)(A)-(C).

¹²⁸ See 47 C.F.R. § 1.2110(c)(2)(ii)(F).

¹²⁹ *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10186-194 ¶¶ 10-18; *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1945-46 ¶ 9.

¹³⁰ *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10185-186 ¶¶ 8-9. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant.

¹³¹ 47 C.F.R. § 1.2110(c)(6).

¹³² 47 C.F.R. § 27.1102(b).

¹³³ 47 C.F.R. § 1.2110(b)(3)(i).

¹³⁴ The recently adopted *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order* at ¶¶ 51-52. Applicants applying as (continued....)

F. Provisions Regarding Former and Current Defaulters

82. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110,¹³⁵ have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.¹³⁶ In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency.¹³⁷ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

83. “Former defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 66, provided that they are otherwise qualified. However, as discussed in Section III.D.3., *infra*, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.¹³⁸

84. “Current defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction – are not eligible to bid in Auction No. 66.¹³⁹

85. Applicants are encouraged to review the Bureau’s previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹⁴⁰ For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹⁴¹ Therefore, with respect to

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consortia should review the *CSEA/Part 1 Report and Order* to understand how the members of the consortia will apply for a license in the event they are winning bidders.

¹³⁵ 47 C.F.R. § 1.2110.

¹³⁶ 47 C.F.R. § 1.2105(a)(2)(xi); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n. 142.

¹³⁷ 47 C.F.R. § 1.2105(a)(2)(x); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

¹³⁸ 47 C.F.R. § 1.2106(a).

¹³⁹ 47 C.F.R. § 1.2105(b)(1); 47 C.F.R. § 1.2105(a)(2)(x); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n.142 (“If any one of an applicant’s controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.”)

¹⁴⁰ *See* “WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (2004) (“*Auction Default Disclosure Public Notice*”). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁴¹ *See* Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (2004) (clarifying the term (continued....))

regulatory or application fees, the provisions of Sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹⁴²

86. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.¹⁴³ Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules "are not affected" by the red light rule.¹⁴⁴ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105.¹⁴⁵ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

87. Prospective applicants in Auction No. 66 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,¹⁴⁶ and such review may result in the dismissal of a winning bidder's long-form application.¹⁴⁷

G. Other Information

88. Applicants owned by member of minority groups and/or women, as defined in Section 1.2110(c)(3),¹⁴⁸ may identify themselves in filling out their short-form applications regarding this status.

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"debt" or "non-tax debt" as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at: <http://wireless.fcc.gov/auctions/58/>.

¹⁴² Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹⁴³ Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Report and Order*").

¹⁴⁴ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

¹⁴⁵ See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and FCC Form 175 default and delinquency disclosure requirements for auction applicants).

¹⁴⁶ See *Debt Collection Report and Order*, 19 FCC Rcd 6540. See also 47 C.F.R. § 1.1112.

¹⁴⁷ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹⁴⁸ 47 C.F.R. § 1.2110(c)(3).

This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions.¹⁴⁹

H. Minor Modifications to Short-Form Applications (FCC Form 175)

89. After the deadline for filing short-form applications (FCC Forms 175) at **6:00 p.m. ET on May 10, 2006**, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, or claim eligibility for a higher bidding credit).¹⁵⁰ Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

90. Any application amendment and related statements of fact must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹⁵¹

91. An applicant must make permissible minor changes to its short-form application, as such changes are defined by Section 1.2105(b), on-line. Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

92. In addition, in the event that changes cannot be made immediately in ISAS for any reason, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Any letter describing changes to an applicant’s short-form application should be submitted by electronic mail to the following address: auction66@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 66 and the name of the applicant (*e.g.*, “RE: Changes to Auction No. 66 Short-Form Application of ABC Corp.”). The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Scott Mackoul of the Auctions and Spectrum Access Division at (202) 418-0660.

93. Applicants should not submit application-specific material through the Commission’s Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction No. 66 procedures.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

94. Section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹⁵² Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an

¹⁴⁹ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. 47 C.F.R. § 1.2110(a).

¹⁵⁰ See 47 C.F.R. § 1.2105(b).

¹⁵¹ See 47 C.F.R. § 1.917.

¹⁵² 47 C.F.R. § 1.65.

amendment reporting substantial changes is a “major amendment” as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹⁵³

95. In the event that the new rules regarding applicants and applications become effective after the deadline for filing short-form applications (FCC Form 175), applicants may be required to submit additional information not required in the initial form. In this regard, applicants considering claiming eligibility as a designated entity in Auction No. 66 should review carefully the recently released *CSEA/Part 1 Designated Entity FNPRM*.¹⁵⁴ The Commission stated in the *CSEA/Part 1 Designated Entity FNPRM* that it intends to complete that proceeding in time so that any resulting rule modifications will apply to Auction No. 66.¹⁵⁵ Moreover, the Commission proposed that in the event that any designated entity applicants have filed an application to participate in an auction prior to the effective date of any designated entity rule changes adopted pursuant to the *CSEA/Part 1 Designated Entity FNPRM*, such applicants would be required to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to section 1.2110 of the Commission’s rules effective as of the date of the statement.¹⁵⁶ Finally, the Commission noted that under this proposal the Bureau will establish any detailed procedures necessary for making required amendments and announce such procedures by public notice.¹⁵⁷ Accordingly, applicants considering claiming eligibility as a designated entity in Auction No. 66 should monitor further proceedings pursuant to the *CSEA/Part 1 Designated Entity FNPRM*.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar — April 24, 2006

96. On Monday, April 24, 2006, the FCC will sponsor a seminar for parties interested in participating in Auction No. 66 at the FCC headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the Advanced Wireless Services rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to this auction.

97. To register, complete the registration form attached hereto as Attachment C and submit it by Thursday, April 20, 2006. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

98. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC’s Auction No. 66 web page at <http://wireless.fcc.gov/auctions/66/>. Select the “Auction Seminar” link. The seminar webcast will be archived for future viewing.

B. Short-Form Application (FCC Form 175) — Due Before 6:00 p.m. ET on May 10, 2006

99. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System.¹⁵⁸ This application must be received at the Commission prior to 6:00 p.m. ET on May 10, 2006. **Late applications will not be accepted.** There is

¹⁵³ See 47 C.F.R. § 1.2105(b)(2).

¹⁵⁴ *CSEA/Part 1 Designated Entity FNPRM*.

¹⁵⁵ *Id.*, ¶ 1.

¹⁵⁶ *Id.*, ¶ 21.

¹⁵⁷ *Id.*, ¶ 21, n.54.

¹⁵⁸ 47 C.F.R. § 12105(a).

no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.¹⁵⁹

100. Applications may generally be filed at any time beginning at noon ET on April 24, 2006, until 6:00 p.m. ET on May 10, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on May 10, 2006.

101. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit their FCC Form 175's or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment D. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

102. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

103. As described more fully in the Commission's rules, after the May 10, 2006, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, or claim eligibility for a higher bidding credit).¹⁶⁰

D. Upfront Payments — Due June 1, 2006

104. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. **All upfront payments must be received in the proper account at Mellon Bank before 6:00 p.m. ET on June 1, 2006.**

1. Making Auction Payments by Wire Transfer

105. Wire transfer payments must be received before 6:00 p.m. ET on June 1, 2006. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh
500 Ross St.
Pittsburgh, PA 15262

BENEFICIARY: FCC/Account # 910-1174

Originating Bank Information (OBI Field): (Skip one space between each information item)

¹⁵⁹ See Section III.D. "Upfront Payments — Due June 1, 2006," *infra*.

¹⁶⁰ 47 C.F.R. § 1.2105(b); see also Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999).

“AUCTIONPAY”

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “A66U”)

FCC CODE 1: (same as FCC Form 159, block 28A: “66”)

PAYER NAME: (same as FCC Form 159, block 2)

LOCKBOX NO. # 358405

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

106. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write “Wire Transfer — Auction Payment for Auction No. 66.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account before the deadline.¹⁶¹ **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

107. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 66 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the June 1, 2006, deadline will result in dismissal of the application and disqualification from participation in the auction.

2. FCC Form 159

108. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Upfront Payments and Bidding Eligibility

109. In the *Part 1 Order*, the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.¹⁶² In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that applicants that are former defaulters be required to pay upfront

¹⁶¹ See Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 11552 (2003).

¹⁶² Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

payments 50 percent greater than non-former defaulters.¹⁶³ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.¹⁶⁴

110. In the *Auction No. 66 Comment Public Notice*, we proposed that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.¹⁶⁵ In order to bid on a license, otherwise qualified bidders that selected that license on Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.¹⁶⁶

111. In the *Auction No. 66 Comment Public Notice*, the Bureau proposed to calculate upfront payments for Auction No. 66 on a license-by-license basis using the following formula:

$$\$0.05 * \text{MHz} * \text{License Area Population.}^{167}$$

The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *Auction No. 66 Comment Public Notice* and sought comment on this proposal.

112. Commenters presented a number of views on the proposed level of upfront payments. Some comments support the proposed upfront payments.¹⁶⁸ Others argue for lowering upfront payments for specific licenses, usually either for all CMA licenses (MSAs and RSAs) or only for the rural RSA licenses.¹⁶⁹ Other comments propose lowering upfront payments for bidders that qualify as designated entities or replacing the upfront payment proposal with a straight percentage deposit.¹⁷⁰

113. Upfront payments help deter frivolous or insincere bidding. In addition, upfront payments provide the Commission with a source of funds in the event that the bidder incurs liability during the auction. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid.

¹⁶³ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); see Section II.F. “Provisions Regarding Former and Current Defaulters,” *supra*.

¹⁶⁴ 47 C.F.R. § 1.2110(c).

¹⁶⁵ *Auction No. 66 Comment Public Notice* at 11.

¹⁶⁶ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4. “Provisionally Winning Bids,” *infra*.

¹⁶⁷ An exception to this formula is that proposed upfront payments are set at \$20,000 per 10 MHz license and \$40,000 per 20 MHz license for the CMA, EA, and REAG licenses covering the Gulf of Mexico. All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

¹⁶⁸ T-Mobile Comments at 9.

¹⁶⁹ See, e.g., Blooston Coalition Reply Comments at 5; NTCA Reply Comments at 2; OPASTCO Reply Comments at 3.

¹⁷⁰ See CAC Comments at 6; Colts Neck Comments at 8-10.

114. As discussed below in connection with minimum opening bids, we are persuaded by the arguments of numerous commenters that for Auction No. 66, the formula to determine upfront payments and minimum opening bids should not apply the same figure to a rural population unit as it does to an urban population unit.¹⁷¹ Commenters assert that because of higher buildout costs, upfront payments and minimum opening bids for less densely populated areas should be calculated at a lower rate than those for higher density areas.¹⁷² More specifically, many commenters contend that upfront payments on licenses covering RSAs should be lowered from \$0.05 per MHz*Pop to \$0.01, 0.02, or 0.025 per MHz*Pop.¹⁷³

115. We will reduce upfront payments for RSA licenses by forty percent (40%) from our initial proposal, *i.e.*, to \$0.03 per MHz*Pop. While some commenters argue for an even greater reduction, we are not persuaded that we should lower upfront payments any further. With respect to licenses for the more densely populated MSAs, we will not reduce the proposed upfront payments. We adopt our initial proposal with respect to such licenses and set the upfront payments for MSAs using the proposed formula, *i.e.*, \$0.05 per MHz*Pop.

116. We also will lower the number of bidding units associated with the RSA licenses by 40%, in order to maintain the one-to-one relationship between bidding units and upfront payment amounts. The number of bidding units associated with the MSA licenses will remain unchanged since the upfront payment amounts for those licenses are unchanged.

117. In order to take into account that rural and urban populations are mixed within a single license in the larger geographic licensing areas, we will apply the lower upfront payment formula for rural areas on a county-by-county basis for all licenses. More specifically, we will first break down the larger geographic areas into their component counties. The lower upfront payment formula of \$0.03 per MHz*Pop will be applied to the population of those counties that are included in an RSA. The formula of \$0.05 per MHz*Pop will be applied to the population of the remaining counties. The upfront payment amount for an EA or REAG license will be calculated as the sum of upfront payments for the counties in the EA or REAG. We will maintain the one-to-one relationship between bidding units and upfront payment amounts, so that bidding unit amounts will change with the changes in upfront payments.

118. We are not persuaded by comments proposing that we alter our upfront payment proposal in other ways. Communications Advisory Counsel argues that designated entities should be able to make lower upfront payments than other bidders.¹⁷⁴ In light of the purpose of the upfront payments, we do not believe a different upfront payment for designated entities is appropriate. As the Commission noted in one of its earliest rulemakings regarding competitive bidding, “[t]he danger of insincere bidding, which upfront payments are designed to deter, exists to no less a degree with respect to these groups.”¹⁷⁵ Finally, Colts Neck suggests that the Commission forego its usual procedure of determining upfront payments and bidding eligibility and replace it with a requirement that bidders have a certain percentage of their bids on deposit with the Commission.¹⁷⁶ We believe, however, that the use of upfront payments in connection with bidding eligibility in past auctions has been successful and no radical departure is needed.

¹⁷¹ See Section IV.B.2. “Reserve Price and Minimum Opening Bids,” *infra*.

¹⁷² See, *e.g.*, WCTA Comments at 3.

¹⁷³ See Blooston Coalition Reply Comments at 5 (\$0.01); RTG Comments at 6 (\$0.02); Wirefree Comments at 1 (\$0.25).

¹⁷⁴ CAC Comments at 6.

¹⁷⁵ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2380 ¶ 186.

¹⁷⁶ Colts Neck Comments at 8-10.

119. The specific upfront payment amounts and associated bidding units for each license available in Auction No. 66 calculated pursuant to the procedures described above, as well as the aggregate reserve price for all AWS-1 licenses, are set forth in Attachment A.

120. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

Example: Upfront Payments and Bidding Flexibility			
Market Number	Market Name	Bidding Units	Upfront Payment
BEA171-B	Anchorage AK	480,000	\$480,000
BEA172-C	Honolulu HI	539,000	\$539,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 1,019,000 bidding units (480,000 + 539,000). If a bidder only wishes to bid on one, but not both, purchasing 539,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, **but not both at the same time**. If the bidder purchased only 480,000 bidding units, it would have enough eligibility for the Anchorage, AK license but not for the Honolulu, HI license.

121. "Former defaulters" should calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5.¹⁷⁷ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a "former defaulter" fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the licenses applied for on its Form 175, the applicant will not be eligible to participate in the auction.

4. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

122. The Commission will use wire transfers for all Auction No. 66 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
ABA Number

¹⁷⁷ 47 C.F.R. § 1.2106(a).

Address of Bank
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number (see below)
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.¹⁷⁸) Eligibility for refunds is discussed in Section V.G., below.

E. Auction Registration

123. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid.

124. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

125. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, June 22, 2006, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

126. In the event that SecurID® cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

F. Remote Electronic Bidding

127. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. **For security purposes, the SecurID® cards, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.** Please note that each SecurID® card is tailored to a specific auction; therefore, SecurID® cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 66.

¹⁷⁸ 47 C.F.R. §1.1910.

128. Please note that the SecurID® cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction – June 26, 2006

129. All qualified bidders will be eligible to participate in a mock auction on Monday, June 26, 2006. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

130. The first round of bidding for Auction No. 66 will begin on Thursday, June 29, 2006. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

131. In the *Auction No. 66 Comment Public Notice*, we proposed to auction all AWS-1 licenses in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format.¹⁷⁹ As described further below, this type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license, unless a modified stopping rule is invoked.

132. We also sought comment on the feasibility and desirability of allocating the AWS-1 licenses among two auctions, run concurrently, with one of the auctions using the standard SMR format and the other using the FCC's package bidding format ("SMR-PB").¹⁸⁰ Under the SMR-PB format, bidders can place bids on groups of licenses they wish to win in combination, with the result that they win either all of the licenses in a group or none of them, in contrast to the license-by-license bidding in the FCC's SMR format.¹⁸¹ In the SMR-PB auction format, each bidder can have at most a single winning bid, so that in order to win any particular license combination, the bidder must have placed a package bid on that license or specific group of licenses.

133. Based on the record and our belief that a single SMR auction offers bidders a simple and effective means of bidding on single or multiple licenses without the additional complications that participating in two concurrent auctions would involve, we will proceed with our proposal to auction all AWS-1 licenses in a single auction using the Commission's standard SMR auction format.

134. Nearly all of the parties commenting on the issue of auction format support our proposal for one SMR auction for AWS-1. While some express concern or opposition to using package bidding generally, nearly all commenters oppose the option of running a package bidding auction concurrently with an SMR auction. For example, Cingular states its support for the concept of package bidding, but suggests that it be employed in an auction that is only SMR-PB.¹⁸² Those concerned with the complexity

¹⁷⁹ *Auction No. 66 Comment Public Notice* at 4.

¹⁸⁰ *Id.* at 4-5. We recommended that the two auctions be run concurrently, rather than sequentially, in order to permit bidders interested in winning licenses in both auctions to coordinate their bidding across auctions, and in order to facilitate the application of the aggregate reserve price. *Id.* at 5.

¹⁸¹ A bid on a "group" of licenses can include a single license.

¹⁸² Cingular Comments at 5.

in bidding in two auctions at the same time stress difficulty in managing eligibility between the two, submitting upfront payments to participate in both, and keeping track of bidding among the auctions. The complexity level increases further given that the two concurrent auctions would have different auction designs.

135. A number of commenters express concern that smaller bidders, including rural carriers and new entrants, would be hardest hit by the increased complexity of two concurrent auctions and package bidding.¹⁸³ Some commenters raise the possibility that an auction using a package bidding format, due to the so-called “threshold problem,” may not assign licenses to the entities that value them most highly.¹⁸⁴ Only two commenters favor allocating some AWS-1 licenses to a second auction with package bidding. Verizon Wireless suggests that package bidding would allow bidders to aggregate licenses more efficiently in order to acquire a nationwide footprint.¹⁸⁵ We agree with those commenters who assert that an SMR auction of the AWS-1 licenses, which includes several large regional area blocks, will provide opportunities for bidders to aggregate licenses in order to obtain nationwide coverage.

136. While Verizon Wireless supports package bidding for the E and F Block AWS-1 licenses, it advocates that the auctions be run sequentially, not concurrently. In particular, Verizon Wireless suggests that the Commission run the SMR auction for A to D Blocks first using the standard SMR auction, followed shortly by an auction for the E and F blocks, allowing for package bidding. Comments filed by Paul Milgrom and Gregory Rosston agree in principle with sequential auctions, but specifically advocate the reverse order – i.e., run the SMR-PB auction before the standard SMR one.¹⁸⁶

137. We find the choice of sequential auctions undesirable in these circumstances. First, it eliminates flexibility for the bidders, as the results from the first auction will stand regardless of how the second auction plays out. Second, as discussed earlier, the AWS-1 licenses are subject to the CSEA aggregate reserve. Determining whether this is met is made much more difficult if two sequential auctions are held.

138. We conclude that it is operationally feasible and appropriate to auction the AWS-1 licenses through a single auction using the Commission’s standard SMR auction format. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

139. Our decision not to employ an SMR-PB format for some AWS-1 licenses does not reflect on future use of package bidding in Commission auctions.

2. Information Available to Bidders Before and During the Auction

140. **Summary.** In the *Auction No. 66 Comment Public Notice*, we proposed to withhold certain information on bidder interests, bids and bidder identities that typically has been revealed prior to and during past FCC auctions, in the event that a single SMR auction is held.¹⁸⁷ In particular, we proposed not to reveal until the close of the auction: (1) bidders’ license selections on their short form

¹⁸³ *Id.* at 3-4.

¹⁸⁴ The “threshold problem” refers to coordination difficulties faced by individual bidders that collectively try to beat a package bid by another bidder whose valuation for the package is less than the aggregate valuations of the individual bidders.

¹⁸⁵ Verizon Wireless Comments at 4.

¹⁸⁶ Milgrom/Rosston Comments at 2.

¹⁸⁷ In this Public Notice, we adopt our proposal to conduct a single SMR auction for Auction No. 66. See Section IV.A.1. “Simultaneous Multiple Round Auction,” *supra*.

applications and the amount of their upfront payments; (2) the amounts of non-provisionally winning bids and the identities of bidders placing those bids; and (3) the identities of bidders making provisionally winning bids.¹⁸⁸

141. The proposal attracted a number of comments, both in support of our proposal and opposed to it. We continue to believe, as we noted in the *Auction No. 66 Comment Public Notice*, that there are benefits as well as potential harms from publicly revealing all information during the auction process. Also as stated in the *Auction No. 66 Comment Public Notice*, we believe that the potential harms from anti-competitive behavior facilitated by the release of extensive information relating to bidder interests, bids, and bidder identities is likely to be greater when the auction is less competitive – that is, when the number of bidders and the level of upfront payments are relatively low compared to the number of licenses offered. Therefore, in balancing the likely disadvantages of making such information available with the potential advantages to bidders from being able to formulate more accurate assessments of license values, we will make our approach contingent on the likely competitiveness of the auction. If we determine that the auction is likely to be highly competitive based on the number of bidders and upfront payments, and therefore, that the risk of successful collusion is low, we will make available bidding information that we typically have made available in previous Commission auctions. If, on the other hand, it appears that the auction may be less competitive, making it easier for bidders to signal and enforce cooperative divisions of the market, we will limit the information relating to bids and bidder identities in a manner that is largely consistent with our proposal in the *Auction No. 66 Comment Public Notice*. In this way, unless it appears that the costs to providing information are likely to be particularly high, we will provide bidders with information that may enhance their abilities to participate confidently and effectively in the auction.

142. We will estimate the level of competition in the auction by calculating a modified eligibility ratio based on upfront payments submitted by bidders. Using this estimate, we will determine the information procedures that will apply during bidding rounds.¹⁸⁹ Specifically, if a modified eligibility ratio, defined as the total number of bidding units of eligibility purchased by bidders, capped as discussed below, relative to the total number of bidding units for the licenses in the auction, is equal to at least three, the auction will proceed under the information procedures typically used for past FCC auctions.¹⁹⁰ For the purposes of calculating the modified eligibility ratio, a single bidder's eligibility will be capped at 50% of the total bidding units in the auction.¹⁹¹

143. Alternatively, if the level of competition appears insufficient, that is if the modified eligibility ratio is less than three, we will limit the information that is released prior to and during the auction in a way that is substantially consistent with, but not identical to, our proposal in the *Auction No.*

¹⁸⁸ We intend to release a public notice identifying the names of applicants that are qualified to participate in the auction, but without indicating applicant's license selections or amounts of upfront payments.

¹⁸⁹ Prior to the auction, we will withhold information on bidder license selections, consistent with our proposal to limit information on bidder interests, although we will make available each bidder's level of eligibility.

¹⁹⁰ The eligibility ratio typically is defined as the sum of bidding units for which bidders have purchased bidding eligibility divided by the total number of bidding units for licenses in the auction. The cap limits the number of bidding units that a single bidder can contribute to the numerator of the modified eligibility ratio.

¹⁹¹ For example, a bidder that selects all licenses and submits an upfront payment sufficient to bid on all the licenses in the auction will be eligible to bid on all the licenses, but because of the 50% cap only half the bidding units will count toward calculating the modified eligibility ratio. Similarly, a bidder that has made an upfront payment covering 80% of the bidding units in the auction will also contribute only 50% of the total bidding units to the calculation of the modified eligibility ratio.

66 Comment Public Notice. We will make available the total eligibility level for the auction as well as bidder-specific eligibility, although we will not identify bidders' license selections. After each round of bidding, the amounts of each bid placed will be made available, but not the identities of the bidders. Under our original proposal, for each license only the amounts of the provisionally winning bids and the number of bids on the license, not the amounts of non-provisionally winning bids, were to have been made available.

144. **Discussion.** As stated in the *Auction No. 66 Comment Public Notice*, the Commission has reserved the option to limit the availability of information on an auction-by-auction basis, and the Bureau retains discretion to limit the information disclosed to bidders. With a single early exception, the Commission has elected not to limit such information.¹⁹² Notwithstanding past decisions, the Commission believes that the public interest will best be served by limiting certain information relating to bidder interests, bids, and bidder identities in Auction No. 66, when it appears that the competitiveness of the auction is likely to be relatively low, as measured by the modified eligibility ratio.

145. This decision to make the availability of information contingent upon competitiveness is supported by a number of commenters. The notion of using a measure of likely competitiveness to determine how much information would be made available was first proposed by T-Mobile.¹⁹³ Subsequently, other commenters have voiced support for compromise proposals that involve, among other criteria, basing the decision on information availability on a similar measure of total eligibility.¹⁹⁴

146. A number of commenters oppose our proposal to withhold certain information for the AWS-1 licenses, challenging the need to undertake measures to deter anti-competitive behavior in FCC auctions generally, and in particular, they question making changes to an established auction process immediately prior to a large auction of licenses suitable for high-valued uses.¹⁹⁵ Some commenters note that the FCC has already modified its auction design to deter signaling,¹⁹⁶ and claim that there is little or no evidence of coordinated bidding behavior in recent auctions.¹⁹⁷

147. In response, we note that it is in large part *because* the upcoming AWS-1 auction will make available a significant number of potentially valuable licenses that we will modify our usual bid and bidder information procedures at this time, if it appears that the auction may not be sufficiently competitive. With fewer bidders, the chances are greater that signaling and retaliatory behavior will be successful, with the result that licenses may not be assigned to the entities that value them most highly. The AWS-1 licenses open up a new band to commercial wireless services, and represent a sizeable portion of existing spectrum available for innovative wireless services. Licensees will have considerable flexibility to respond to consumer demand for innovative advanced services, and we feel particularly

¹⁹² See *Auction No. 66 Comment Public Notice* at 6.

¹⁹³ *Ex parte* Letter from Thomas J. Sugrue for T-Mobile, March 7, 2006, at 1; *Ex parte* Letter from Thomas J. Sugrue and Peter Cramton for T-Mobile, March 20, 2006, at 1-3. The proposal first stated in the earlier letter was modified and expanded in the March 20 letter; that proposal suggested making information available if an adjusted eligibility ratio was at least two.

¹⁹⁴ See, e.g., *Ex parte* Letter from Carl Northrop on behalf of Cingular, Columbia/MC, Edge Wireless Licenses, LLC, Leap, Madison Dearborn, MetroPCS, RTG, T-Mobile, and U.S. Cellular, including attachment, dated April 3, 2006 (supporting T-Mobile proposal).

¹⁹⁵ See, e.g., Alltel Comments at 1; Leap Comments at 1.

¹⁹⁶ T-Mobile Comments, Cramton Decl. at 5; Alltel Reply Comments at 5; Cingular Reply Comments at 3; Leap Reply Comments at 4.

¹⁹⁷ U.S. Cellular Comments at 15; MetroPCS Reply Comments at 10.

obligated to assure that these licenses are assigned to those entities that will put them to their highest valued uses.

148. With respect to arguments that the FCC has already eliminated the possibility of bid signaling and has no evidence on which to base its beliefs that such behavior may occur in Auction No. 66, we note that at least two papers mentioned in this proceeding rely on signaling consistent with the FCC's current standard SMR auction format.¹⁹⁸ Furthermore, since some types of signaling and coordinated bidding are very hard to detect in auction data, making it difficult to pursue enforcement actions after such alleged activity has occurred, it is important to reduce the potential for such collusive bidding behavior to occur in the first place, in circumstances in which we believe collusion is most likely to occur.

149. At the same time, we recognize that the information that has typically been provided during FCC auctions may be of value in helping bidders to form more accurate and confident assessments of license values, thus allowing them to participate more effectively in the auction.¹⁹⁹ We believe that, under circumstances in which collusion is less likely to be successful, the benefits to bidders from making information available are likely to outweigh the potential harms from facilitating collusive behavior. As a result, we will not adopt our proposal to limit information when the auction is expected to be competitive as indicated by the modified eligibility ratio of three or more – that is, when coordinated bidding activity is unlikely to be sustainable.

150. A number of commenters addressed the various benefits that information provides to bidders, especially to bidders with fewer resources, including many new entrants and rural carriers.²⁰⁰ In particular, these commenters suggest that knowing the identities of bidders active in particular markets yields useful data on such factors as the potential for negotiating roaming agreements,²⁰¹ on the likelihood that infrastructure and equipment for certain technologies will be available,²⁰² and on whether the structure of competition in a given market is likely to support the bidder's business plan.²⁰³ Some of the commenters also claim that that the uncertainty inherent in opening up a new spectrum band for as yet unknown services and technologies makes it all the more useful to participants to have such information as may be available, including round-by-round information on bids and bidders identities.²⁰⁴

151. Some commenters opposing the proposal to withhold information state that the advantages gained by knowing bidder identities are particularly important to small and mid-sized entities and to new entrants and that consequently, they argue, limiting bid and bidder information will

¹⁹⁸ See, e.g., Reitsma, Paul S.A., Peter Stone, Janos A. Csirik, and Michael L. Littman, "Self-enforcing Strategic Demand Reduction," in *Agent Mediated Electronic Commerce IV: Designing Mechanisms and Systems*, Lecture Notes in Artificial Intelligence, PP. 289-306, Springer Verlag, 2002; and Bajari, P. and J. Fox, "Complementarities and Collusion in an FCC Spectrum Auction," NBER working paper, (2005). As noted above, the Commission will continue to scrutinize bidding activity for any instances in which bidding patterns suggest that collusion may be occurring. See Section I.B.2. "Prohibition of Collusion; Compliance with Antitrust Laws," *supra*.

¹⁹⁹ Our recognition that information may be beneficial to bidders does not indicate our acceptance of all of the arguments to that effect presented by commenters.

²⁰⁰ See, e.g., Blooston Coalition Reply Comments at 3.

²⁰¹ See Centennial Comments at 6; Leap Comments at 10; RTG Comments at 3; OPASTCO Reply Comments at 2-3.

²⁰² See, e.g., Leap Comments at 10-11; T-Mobile Comments at 8; U.S. Cellular Comments at 17.

²⁰³ See, e.g., MetroPCS Comments at 10; MDP/TA Reply Comments at 4.

²⁰⁴ See Alltel Reply Comments at 6-7; MetroPCS Reply Comments at 9.

disadvantage those bidders disproportionately.²⁰⁵ Specifically, commenters suggest that smaller businesses rely more heavily on the need to negotiate agreements (on roaming and technological compatibility, for example) with neighboring service providers and therefore have a greater interest in knowing who adjacent licensees are likely to be.²⁰⁶ Some point out that niche service providers, and their financial backers, are particularly interested in knowing whether another entity targeting the same demographic population is likely to be competing in a given market.²⁰⁷ In addition, commenters say that financial backers of smaller firms trust that a bid by a market leader reflects a well-researched valuation and are more likely to be comfortable investing in a smaller entity if the smaller firm's bids are not out of line with those of the large entities. Accordingly, they claim, if investors do not have the reassurance of knowing how the large bidders are bidding, the additional risk will reduce the amount of capital they are willing to lend and, consequently, reduce what smaller firms are able to bid for and win at auction.²⁰⁸

152. Commenters also suggest that the additional uncertainty about the value of licenses introduced by the lack of information on bidder identities will increase bidders' fear of the winner's curse, leading them to bid below their valuations for the licenses. Some assert that those most affected by the uncertainty will scale back their bids more than proportionately and that therefore, small bidders may fail to win licenses for which they are the highest valuing bidder, thereby lowering auction efficiency.²⁰⁹

153. The costs to releasing information as some commenters request, however, likely will outweigh the potential advantages of releasing the information, if the level of competition in the auction seems insufficient to make cooperative divisions of the market difficult to signal and sustain.²¹⁰ Accordingly, if the auction is not sufficiently competitive as indicated by the modified eligibility ratio, we will not provide the information, notwithstanding any potential benefits doing so might provide to some bidders.

154. Parties opposing our proposal to limit information point out a number of other factors which we also do not regard as sufficient to dissuade us from our decision to limit the information that will be made available if the modified eligibility ratio is below three for Auction No. 66. Some commenters warn that deliberate and inadvertent disclosures of information may represent a threat to the validity of the auction.²¹¹ We do not believe that significant disclosures are likely to occur, in part because revealing bids or bid strategies violates the Commission's anti-collusion rules, and in part

²⁰⁵ See, e.g., MetroPCS Comments at 12; RTG Comments at 4; U.S. Cellular Comments at 6-7, 17-19; Comments of Blooston Coalition Reply Comments at 3; OPASTCO Reply Comments at 2-3.

²⁰⁶ See, e.g., U.S. Cellular Comments at 18.

²⁰⁷ See, e.g., MetroPCS Comments at 10; MDP/TA Reply Comments at 4.

²⁰⁸ See, e.g., MetroPCS Comments at 12; Columbia/MC Comments at 7.

²⁰⁹ *Ex parte* Statement of Professor Robert J. Weber submitted on behalf of U.S. Cellular, dated March 7, 2006, at 4.

²¹⁰ With respect to arguments that smaller bidders need more information in order to participate in this auction, we note that the Commission has taken several steps to assure that they will have ample opportunity to compete for AWS-1 spectrum licenses. For example, in this Public Notice, we have reduced by 40 percent the minimum opening bids and upfront payments for CMA licenses covering RSAs. Last fall, the Commission increased the amount of spectrum licensed on the basis of CMAs from 10 to 20 megahertz in order to provide greater opportunities for smaller providers to obtain access to this spectrum at auction. Finally, substantial bidding credits are available for small businesses of all types.

²¹¹ See, e.g., Colts Neck Comments at 13; T-Mobile Comments at 7 and Cramton Decl. at 4; Blooston Coalition Reply Comments at 4.

because bidders will regard it as being in their interest to preserve the secrecy of their bidding activity.²¹² Furthermore, if an occasional disclosure does occur, we do not believe the auction is likely to be affected in a way which will compromise its validity. With respect to bidding data, much of the data that is generated after a round of a large SMR auction is superseded by data for the next round, so that the advantage to a bidder from knowing improperly disclosed information is likely to disappear within several hours. Milgrom and Rosston, commenting in support of our proposal to limit information availability, also notes that occasional disclosures, if they were to occur, would likely have little impact.²¹³

155. Several commenters suggest that a policy of limiting information relating to bidder interests prior to the auction, and limiting bidder identities during the auction constitutes a departure from the Commission's traditional commitment to a transparent auction process.²¹⁴ We disagree. As discussed in the Auction No. 66 Comment Public Notice, we plan to release all withheld information at the close of the auction. Bidders and the public will be able to examine all round-by-round bidding activity, and any allegations of irregular bidding conduct will be investigated. We note that even when bid and bidder information is not withheld, it is our policy generally to address any such concerns after the close of an auction, when there is greater opportunity for investigation of such allegations.²¹⁵

156. Commenters present various arguments regarding what information should be released and when, in the event that the Commission limits the information revealed in any way, as will be the case if the modified eligibility ratio is less than three. Some argue that particular information should be released,²¹⁶ while others argue that the Commission should release all information but do so only at intervals.²¹⁷ While these proposals may achieve some benefits by disclosing information, we are not persuaded any of them would be effective in preventing coordinated and retaliatory bidding, especially when competition in the auction is relatively weak, *e.g.*, the modified eligibility ratio is less than three, and, therefore, the risk of collusion is greatest.

157. We note again that even if the limited information procedures are in effect, we plan to make available during the auction the amounts of all bids placed on each license in each round. Even absent bidder identities, this information will give bidders an indication of demand for the licenses. Bidders and their investors will be able to observe the bids for licenses in the six offered spectrum blocks, which will help them assess whether their bids are likely to be consistent with the valuations of other bidders. This information will reduce uncertainty about license valuations, mitigating fear of the winner's curse for bidders and their financial backers.

²¹² See Section I.B.2., "Prohibition of Collusion; Compliance with Antitrust Laws," *supra*.

²¹³ Milgrom/Rosston Reply Comments at 3.

²¹⁴ Reuters Comments at 3; Cingular Comments at 7; Leap Reply Comments at 2.

²¹⁵ See Baker Creek Communications, L.P., For Authority to Construct and Operate Local Multipoint Distribution Services In Multiple Basic Trading Areas, DA 98-1921, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998); Letter from Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Steven R. Sixberry, Nevada Wireless, DA 00-1949 (rel. August 24, 2000).

²¹⁶ See *e.g.*, NTCH Comments at 4 (release information regarding bids on CMA and EA licenses); *Ex parte* Letter from Warren Lavey on behalf of U.S. Cellular, including Memorandum from Robert C. Marshall to Leslie M. Marx, Chief Economist, both dated March 21, 2006 (release identities of winning bidders).

²¹⁷ See, *e.g.*, *Ex parte* Letter from George Y. Wheeler on behalf of U.S. Cellular, dated March 17, 2006.

158. **Other Issues.** We do not believe that the information disclosure procedures established for this auction will interfere with the administration of or compliance with the Commission's anti-collusion rule. Section 1.2105(c)(1) of the Commission's rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.²¹⁸ In past auctions, each applicant's selection of licenses has been publicly available through the Commission's on-line short-form application database. In Auction No. 66, however, the Commission may not disclose information regarding license selection until after the auction closes. As in the past, the Commission will disclose the other portions of applicants' short-form applications, through its on-line database and certain application-based information through public notices.²¹⁹ Thus, even without information regarding license selection, applicants would be able to comply with Section 1.2105(c) by not disclosing bids or bidding strategies to any other applicants in the auction. This approach, however, could inhibit otherwise lawful communications with applicants for licenses in other geographic license areas, which the Commission's rule permits.²²⁰ Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a pending auction, including but not limited to Auction No. 66, whether applicants in Auction No. 66 have applied for licenses in any of the same geographic areas as that applicant. After the Bureau conducts its initial review of applications to participate in Auction No. 66, each applicant with a short-form application to participate in a pending auction will receive a letter that lists the applicants in Auction No. 66 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction No. 66 applicant(s) by name but will not list the license selections of the Auction No. 66 applicant(s). As in past auctions, additional information regarding applicants in Auction No. 66 that is needed to comply with Section 1.2105(c), e.g., the identities of controlling interest in the applicant and ownership interests greater than ten percent (10%), will be available through the publicly accessible on-line short-form application database.²²¹

159. Finally, we do not agree with commenters that suggest that SEC rules requiring bidders to disclose material financial information might require bidders to disclose bidding information during the auction.²²² Neither MetroPCS nor U.S. Cellular cites any specific SEC requirement that explicitly requires disclosure of bidding information and we are aware of none. Until the SEC addresses the issue, the Commission will not presume that SEC rules require public disclosure of information about bidding while an auction is still underway.

²¹⁸ 47 C.F.R. § 1.2105(c)(1).

²¹⁹ Comments premised on such information being unavailable are inapposite to the procedure we adopt. *See* Cingular Comments at 9-10 (asserting applicants would be "forced to avoid contact with any entities who might be participating in the auction"); *see also* Leap Comments at 10 n.19 (suggesting that questions might be raised if short-form application information is not publicly revealed); Reuters Comments at 3 (questioning how applicants would know the identity of other applicants with which they could not communicate); Verizon Wireless Comments at 4-5 (asserting that the Bureau must release information regarding the ownership of applicants).

²²⁰ As discussed at greater length elsewhere in this Public Notice, other laws may prohibit particular communications regarding bids and bidding strategies. Nothing in the Commission's rules or procedures insulates applicants against liability for violating such laws, e.g., applicable anti-trust laws.

²²¹ For purposes of Section 1.2105(c), the term applicant includes all controlling interests, all parties with ownership interests greater than ten percent (10%) and all officers and directors of the applicant. 47 C.F.R. § 1.2105(c)(7).

²²² MetroPCS Comments at 13; U.S. Cellular Comments at 22.

3. Eligibility and Activity Rules

160. In the *Auction No. 66 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.²²³ One commenter suggested that the Commission eliminate the use of bidding units. Colts Neck suggests that the Commission define a bidder's eligibility simply as a multiple of the amount the bidder places on deposit with the Commission.²²⁴ This proposal ignores the Commission's use of bidding units to measure bidder participation in the auction pursuant to the Commission's activity rules. The Commission uses activity rules to move the auction at an appropriate speed while providing sufficient flexibility to permit bidders to pursue a wide range of alternative bidding strategies.²²⁵ We believe the Commission's activity rules serve an important purpose and decline to adopt the suggestion by Colts Neck Solutions, which would undermine those rules.

161. Accordingly, we adopt the proposed use of upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 66. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.**

162. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

163. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bid Amounts and Bid Increment Amounts" in Section IV.B.3, *below*). The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Communications Advisory Counsel urges that no minimum activity requirements be imposed on designated entities that apply to bid on less than one percent (1%) of the licenses available in Auction No. 66.²²⁶ In addition, Communications Advisory Counsel urges that a reduced minimum activity requirement should apply to all designated entities.²²⁷ No persuasive reason has been presented for applying different activity requirements to bidders that are designated entities than

²²³ *Auction 66 Comment Public Notice* at 10-11.

²²⁴ Colts Neck Comments at 8-10.

²²⁵ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2371 ¶ 134.

²²⁶ CAC Comments at 7; *see also* Blooston Coalition Reply Comments at 6 (supporting CAC Comments).

²²⁷ CAC Comments at 7.

to other bidders. The Commission's activity rule paces the auction by requiring bidders to bid actively. There is no reason to modify this requirement based on either the number of licenses for which the bidder has applied or the bidder's status as a designated entity. Bidders applying for few licenses or that are designated entities suffer no disadvantage from complying with the same activity rule as other bidders. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.4 and "Stage Transitions" in Section IV.A.5, *below*), we adopt them for Auction No. 66.

4. Auction Stages

164. In the *Auction No. 66 Comment Public Notice*, we proposed to conduct the auction in two stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility.²²⁸ Finally, we proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. One commenter directly addresses our proposal, expressing support.²²⁹

165. We adopt our proposals for the activity rules and stages. Below are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

166. **Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

167. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

168. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, we adopt them for Auction No. 66.

²²⁸ *Auction No. 66 Comment Public Notice* at 12-13.

²²⁹ T-Mobile Comments at 3.

5. Stage Transitions

169. In the *Auction No. 66 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding.²³⁰ We further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.²³¹ The one commenter addressing the proposal directly supports it.²³²

170. We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the licenses being auctioned (as measured in bidding units).²³³ In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids,²³⁴ the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 66.

6. Activity Rule Waivers

171. In the *Auction No. 66 Comment Public Notice*, we proposed that each bidder in the auction be provided with three activity rule waivers.²³⁵ Three commenters address the proposal. T-Mobile supports the proposal.²³⁶ Communications Advisory Counsel and the Blooston Rural AWS Coalition argue that designated entities should receive additional waivers, “to have the ability to take a ‘time out’” during the late stages of the auction.²³⁷ The comments requesting additional waivers do not demonstrate why the proposed three waivers are insufficient, or why designated entities might have a greater need for a “time out” than any other bidder. We adopt our proposal that each bidder be provided three activity rule waivers. We are satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

172. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder’s current bidding eligibility despite the bidder’s activity in the current round being below the required minimum activity level. An activity rule waiver

²³⁰ The percentage of bidding units receiving new provisionally winning bids is reported as the “Stage Transition Percentage” on the Results tab of the FCC Auction System.

²³¹ *Auction No. 66 Comment Public Notice* at 12.

²³² T-Mobile Comments at 3.

²³³ The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. *See* Section IV.A.7. “Auction Stopping Rules,” *infra*.

²³⁴ When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses.

²³⁵ *Auction No. 66 Comment Public Notice* at 13.

²³⁶ T-Mobile Comments at 3.

²³⁷ Blooston Coalition Reply Comments at 6; *see* CAC Comments at 7.

applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a “proactive waiver”) or applied automatically by the FCC Auction System (an “automatic waiver”) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

173. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder’s activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder’s eligibility, possibly curtailing or eliminating the bidder’s ability to place additional bids in the auction.

174. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the “reduce eligibility” function in the FCC Auction System. In this case, the bidder’s eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in “Auction Stages” (*see* Section IV.A.4 *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet closed.

175. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the “apply waiver” function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder’s eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. **Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

7. Auction Stopping Rules

176. For Auction No. 66, the Bureau proposed to employ a simultaneous stopping rule approach.²³⁸ The Bureau also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

177. The Bureau further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no provisionally winning bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

178. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

²³⁸ *Auction No. 66 Comment Public Notice* at 5-6.

179. We proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.²³⁹ We noted that before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

180. In comments filed in response to the *Auction No. 66 Comment Public Notice*, Cingular asserts that the Commission should modify its simultaneous stopping rule to avoid the possibility that the stopping rule might close bidding before the net winning bids meet the reserve price.²⁴⁰ Cingular suggests that in the event the net winning bids do not meet the reserve price at the close of a round that would otherwise trigger the stopping rule, the Commission should announce that fact and hold the auction open for at least one more round.²⁴¹ If subsequently the net winning bids do not meet the reserve price at the close of a round that would otherwise trigger the stopping rule, the Commission could close bidding and, if necessary, cancel the auction pursuant to statute.²⁴² In a subsequent reply comment, U.S. Cellular supports Cingular's suggestion.²⁴³

181. We believe that the proposal that the Bureau retain discretion to keep the auction open even if no new bids or proactive waivers are submitted and no provisionally winning bids are withdrawn in a round is sufficient to address the concerns raised in the comments.²⁴⁴ This differs from Cingular's proposal to the extent that the decision to keep bidding open will be within the Bureau's discretion. Unlike a fixed rule that the auction will remain open "at least one more round," this discretionary approach will not unnecessarily encourage bidders to "wait and see" if other bidders will raise bids to meet the reserve.²⁴⁵

182. We believe that the proposed stopping rules are appropriate for Auction No. 66, because our experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore we adopt the proposals made in the *Auction No. 66 Comment Public Notice*. Auction No. 66 will begin under the simultaneous stopping rule approach, and the Bureau will retain the discretion to employ the other versions of the stopping rule.

8. Auction Delay, Suspension, or Cancellation

183. In the *Auction No. 66 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.²⁴⁶ We received no comment on this issue.

²³⁹ *Id.* at 5.

²⁴⁰ Cingular Comments at 11.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ U.S. Cellular Comments at 11.

²⁴⁴ *Auction No. 66 Comment Public Notice* at 8.

²⁴⁵ In addition, as noted above, the effect of the Bureau exercising its discretion will be that the activity rule will apply as usual and a bidder with insufficient activity will either use an activity waiver (if it has any left) or lose bidding eligibility. Cingular does not address how the activity rule would apply under its proposed modified stopping rule.

²⁴⁶ *Id.* at 6.

184. Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed rules regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

185. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

186. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

2. Reserve Price and Minimum Opening Bids

187. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.²⁴⁷ Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.²⁴⁸ Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.²⁴⁹ The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.²⁵⁰

188. Congress recently required the Commission to revise existing regulations regarding reserve prices for auctions involving "eligible frequencies" subject to CSEA. CSEA defines "eligible frequencies" as including frequencies from 1710-1755 MHz.²⁵¹ Thus, each AWS-1 license authorizes use

²⁴⁷ 47 U.S.C. § 309(j)(4)(F).

²⁴⁸ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 375, 455-456 ¶ 141 (1997) ("*Part 1 Third Report and Order*").

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ CSEA, § 202.

of frequencies, one-half of which are subject to CSEA requirements.²⁵² In CSEA, Congress directed the Commission to make revisions that would to prescribe methods by which the total cash proceeds from any auction of licenses authorizing use of eligible frequencies shall equal at least 110 percent of the total estimated relocation costs provided to the Commission pursuant to CSEA.²⁵³ Accordingly, the Commission recently revised its reserve price rule.²⁵⁴

189. CSEA also imposes other related requirements regarding the proceeds from an auction involving eligible frequencies. Pursuant to CSEA, the total cash proceeds “attributable to” eligible spectrum must be at least 110 percent of the total estimated relocation costs before the Commission may conclude the auction.²⁵⁵ If this condition is not met, CSEA requires that the Commission shall cancel the auction.²⁵⁶ Finally, in CSEA, Congress also directed that “[c]ash proceeds attributable to the auction of any eligible frequencies . . . shall be deposited in the Spectrum Relocation Fund” created by CSEA.²⁵⁷

a. Reserve Price

190. Pursuant to CSEA, on December 27, 2005, NTIA notified the Commission of the estimated relocation costs and timelines for relocation of eligible federal entities assigned to frequencies from 1710 to 1755 MHz.²⁵⁸ NTIA reported that the total estimated relocation costs equal \$935,940,312. This information can be found at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>.

191. Accordingly, in the *Auction No. 66 Comment Public Notice*, we proposed to establish an aggregate reserve price of \$1,029,534,343.20 for all AWS-1 licenses.²⁵⁹ This aggregate reserve price is 110 percent of total estimated relocation costs of \$935,940,312 and therefore the minimum reserve price required by CSEA.

192. For purposes of determining whether a CSEA revenue requirement has been met, the Commission has determined that “total cash proceeds” means winning bids net of any applicable bidding credit discounts at the end of bidding (*e.g.*, exclusive of tribal lands bidding credits).²⁶⁰ Given that one-half of the frequencies authorized for use by each AWS-1 license is subject to CSEA, we proposed in the *Auction No. 66 Comment Public Notice*, that one-half of each relevant bid for each license would be considered “attributable” to “eligible frequencies” for purposes of CSEA. Accordingly, for determining whether the reserve price is met in Auction No. 66, one-half of each winning bid, net of any applicable bidding credit discounts at the end of bidding (*e.g.*, exclusive of tribal lands bidding credits) would be counted toward meeting the reserve price. Furthermore, consistent with the statute, the same amount would determine whether the auction may conclude pursuant to CSEA.

193. A few commenters disagree with our proposal to consider one-half of each relevant bid when determining whether the reserve price has been met. Verizon Wireless objects that the proposal wrongly “assumes that precisely one-half of any AWS-1 bid can be attributed to one-half the

²⁵² See Section I.A. “Introduction,” *supra*.

²⁵³ See CSEA, § 203(b).

²⁵⁴ See *CSEA/Part 1 Report and Order*.

²⁵⁵ See CSEA, § 203(b).

²⁵⁶ *Id.*

²⁵⁷ CSEA, § 203(c).

²⁵⁸ See CSEA, § 202.

²⁵⁹ See *Auction No. 66 Comment Public Notice* at 14.

²⁶⁰ See *CSEA/Part 1 Declaratory Ruling*, 20 FCC Rcd at 11270-72 ¶¶ 5-12.

spectrum.”²⁶¹ Verizon Wireless also argues that by attributing only half of each relevant bid to meeting the reserve, the Commission is improperly “mandat[ing] how those funds should be apportioned over the 45 MHz of spectrum that will be cleared” and “ensur[ing] that a minimum of additional funds be secured for auctioning other spectrum separate from this band [i.e., the other half of each license.]”²⁶² This, according to Verizon Wireless, amounts to the Commission “attempt[ing] to assess a value [of] the spectrum being auctioned.”²⁶³ In reply comments, Cingular and T-Mobile second Verizon Wireless’s arguments.²⁶⁴

194. We are not persuaded by these arguments. CSEA, which refers variously to “proceeds from any auction of eligible frequencies,” “proceeds attributable to such spectrum,” and “proceeds attributable to the auction of any eligible frequencies,” plainly provides that we may attribute a portion of bids for licenses that authorize use of both eligible and non-eligible frequencies to the amounts used to determine whether CSEA requirements have been met. Furthermore, it is reasonable to attribute one-half of relevant bids to determine whether the CSEA-required reserve price is met given that every AWS-1 license authorizes use of frequencies of which one-half are eligible frequencies.²⁶⁵ The fact that some parties may not value a license authorizing use of one-half of the frequencies of an AWS-1 license at precisely one-half the value of the corresponding AWS-1 license does not make this proposal unreasonable.

195. Attributing one-half of relevant bids to meeting the CSEA-required reserve price means that the reserve price only will be met if the full amount of relevant bids is double the reserve price. As reflected by Verizon Wireless’s arguments, this could be viewed as effectively establishing a reserve price on the non-CSEA-eligible frequencies covered by the AWS-1 licenses. Contrary to Verizon Wireless, however, any effective reserve price for non-CSEA-eligible spectrum is well within the Commission’s authority. Moreover, under present circumstances, the amount of the effective reserve is appropriate.

196. The Communications Act expressly contemplates that the Commission may adopt a reserve price in any competitive bidding for licenses and construction permits, not only when CSEA eligible frequencies are involved.²⁶⁶ The Commission’s authority to do so furthers the Commission’s statutory mandate to “recover[] for the public a portion of the value of the public spectrum resource.”²⁶⁷ Verizon Wireless alleges that the proposed reserve price attempts to set the value of non-CSEA-eligible frequencies, which Verizon Wireless contends the Commission should not do. In the present circumstances, however, the amount of the effective reserve price on non-CSEA-eligible spectrum is determined by the reserve price on CSEA eligible spectrum. That amount, in turn, is based on NTIA’s estimates of relocation costs to reimburse eligible federal entities. Thus, the reserve price does not

²⁶¹ Verizon Wireless Comments at 8.

²⁶² *Id.* at 7.

²⁶³ *Id.* at 8.

²⁶⁴ Cingular Reply Comments at 5-6; T-Mobile Reply Comments at 7-8.

²⁶⁵ CSEA does not alter the Commission’s authority to establish services that include both eligible and non-eligible frequencies or to offer licenses authorizing use of eligible and non-eligible frequencies in varying proportions in a single auction. The Commission’s discretion pursuant to CSEA to attribute bids for such licenses between eligible and non-eligible frequencies enables the Commission to serve CSEA’s objectives of meeting estimated relocation costs and clearing eligible frequencies together with other public interests in spectrum management applicable to both eligible frequencies and non-eligible frequencies.

²⁶⁶ 47 U.S.C. § 309(j)(4)(F).

²⁶⁷ 47 U.S.C. § 309(j)(3)(C).

attempt to, and does not, set the value of the non-CSEA eligible spectrum, any more than it sets the value of the CSEA eligible spectrum.

197. Finally, we believe that effectively requiring that the full amount of relevant bids to be twice the estimated relocations costs of eligible federal entities is consistent with CSEA. The AWS-1 licenses were defined prior to the adoption of CSEA and Congress knew when it referred to “proceeds attributable” to eligible frequencies that the Commission intended to make available licenses combining eligible and non-eligible frequencies.

198. We adopt the proposal in the *Auction No. 66 Comment Public Notice*. We will apply an aggregate reserve price of \$1,029,534,343.20 to all AWS-1 licenses in Auction No. 66. Given that one-half of the frequencies authorized for use by each license are CSEA eligible frequencies, one-half of each winning bid, net of any applicable bidding credit discounts at the end of bidding (*e.g.*, exclusive of tribal lands bidding credits), will be counted toward meeting the reserve price.

199. In light of the proposed procedures regarding information available to bidders,²⁶⁸ we also sought comment in the *Auction No. 66 Comment Public Notice* on whether the Commission should announce before the close of bidding whether the reserve price has been met. In comments, Cingular stated that if the Commission proceeds with its proposal to limit information regarding provisionally winning bids, it should make an announcement when the reserve price has been met.²⁶⁹

200. If information on net bids is withheld during the auction as described above (*i.e.*, if the modified eligibility ratio is less than three), we agree with Cingular that an announcement should be made when the reserve price has been met.²⁷⁰ Therefore, if information regarding net bids is not provided, we will issue an announcement in the FCC Auction System stating that the reserve has been met immediately following the first round in which that occurs. Both the registered bidders and the general public will be able to view such announcements through the Commission’s website. We caution, however, that an announcement that the reserve price has been met following a round of the auction does not guarantee that the reserve price will continue to be met. Accordingly, after making the initial announcement that the reserve has been met, we will make a further announcement in the FCC Auction System after any round in which the reserve price status changes. As noted in the *Auction No. 66 Comment Public Notice*, the amount of net winning bids may decline during an auction, if either provisionally winning bids are withdrawn or a higher gross but lower net bid displaces a prior provisional winner.²⁷¹

b. Minimum Opening Bids

201. In addition to proposing an aggregate reserve price, the Bureau proposed in the *Auction No. 66 Comment Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids.²⁷² Specifically, for Auction No. 66, we proposed the following formula for calculating license-by-license minimum opening bids:

$$\$0.05 * \text{MHz} * \text{License Area Population.}^{273}$$

²⁶⁸ See Section IV.A.2. “Information Available to Bidders Before and During an Auction,” *supra*.

²⁶⁹ Cingular Comments at 10.

²⁷⁰ If information on net bids is revealed during the auction (*i.e.*, modified eligibility ration is three or greater), there will be no need to make such an announcement.

²⁷¹ *Auction No. 66 Comment Public Notice* at n. 37.

²⁷² *Id.* at 15.

²⁷³ An exception to this formula is that proposed upfront payments are set at \$20,000 per 10 MHz license and \$40,000 per 20 MHz license for the CMA, EA, and REAG licenses covering the Gulf of Mexico. All population (continued....)

The Bureau sought comment on this proposal and, in the alternative, whether, consistent with the Section 309(j), the public interest would be served by having no minimum opening bid.²⁷⁴

202. We received a variety of comments on the proposed level of minimum opening bids. Some commenters support the Bureau's proposal.²⁷⁵ A few commenters assert that no minimum opening bids should be established, given the use of a reserve price.²⁷⁶ Numerous commenters believe that the formula to determine upfront payments and minimum opening bids should not apply the same figure to a rural population as it does to an urban population. They assert that because of higher buildout costs, upfront payments and minimum opening bids for less densely populated areas should be lower than those for more densely populated areas.²⁷⁷ More specifically, many commenters contend that minimum opening bids for licenses covering RSAs should be lowered from \$0.05 per MHz*Pop to \$0.01, 0.02, or 0.025 per MHz*Pop.²⁷⁸

203. In addition, some commenters have argued that prior auction results and private market sales indicate that the proposed minimum opening bids for sparsely populated areas may exceed the market price of the license, potentially resulting in a number of unsold licenses.²⁷⁹

204. In Commission auctions, minimum opening bids are intended to serve as useful starting points for bidding. Minimum opening bids are not intended to be estimates of final auction prices or to reflect all differences between license values. Accordingly, differences in license characteristics, such as population density, that may result in different final prices do not always necessitate different minimum opening bids for the licenses.

205. We are persuaded by the record, however, that minimum opening bids based on our proposal may be too high for licenses covering low density RSAs. We conclude that it is appropriate to reduce minimum opening bids for RSAs by forty percent (40%) from our initial proposal, *i.e.* to \$0.03 per MHz*Pop. While some commenters argue for an even greater reduction, we are not persuaded that we should lower minimum opening bids any further.

206. No equivalent evidence supports a similar reduction in the minimum opening bids for licenses covering MSAs. Accordingly, we will adopt our initial proposal with respect to such licenses and set the minimum opening bids using the proposed formula, *i.e.*, \$0.05 per MHz*Pop.

207. In order to take into account that rural and urban populations are covered by a single license in larger geographic area licenses, we will apply the lower minimum opening bid formula for rural areas on a county-by-county basis for all licenses. More specifically, we first will break down the larger

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figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. *See* Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁷⁴ *Auction No. 66 Comment Public Notice* at 15.

²⁷⁵ T-Mobile Comments at 9.

²⁷⁶ Wirefree Comments at 1; U.S. Cellular Reply Comments at 11.

²⁷⁷ *See, e.g.*, WCTA Comments at 3.

²⁷⁸ *See* Blooston Coalition Reply Comments at 5 (\$0.01); RTG Comments at 6 (\$0.02); MetroPCS Reply Comments at 14-15 (\$0.25).

²⁷⁹ *See* Farmers Mutual Comments at 3; RTG Comments at 6.

geographic areas into their component counties.²⁸⁰ The lower minimum opening bid formula of \$0.03 per MHz*Pop will be applied to the population of those rural counties that are included in an RSA. The formula of \$0.05 per MHz*Pop will be applied to the population of the remaining counties. The minimum opening bid for an EA or REAG license will be calculated as the sum of minimum opening bids for the counties in the EA or REAG. Finally, as described above, we have made corresponding changes in the upfront payments and bidding units for each licenses.²⁸¹

208. We did not receive any comments addressing our proposal that we retain the discretion to reduce minimum opening bid amounts. We adopt this proposal. The minimum opening bid amounts we adopt for Auction No. 66 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses.

209. The specific minimum opening bid amounts for each license available in Auction No. 66 calculated pursuant to the procedure describe above, as well as the aggregate reserve price for all AWS-1 licenses, are set forth in Attachment A.

3. Bid Amounts

210. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts.²⁸² The FCC Auction System will list the nine bid amounts for each license.²⁸³ The nine bid amounts for each license consist of the minimum acceptable bid amount calculated using an activity-based formula and additional amounts calculated using a bid increment percentage.

a. Minimum Acceptable Bid Amounts and Bid Increment Amounts

211. In the *Auction No. 66 Comment Public Notice*, we proposed that the minimum acceptable bid amount for a license would be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license would be equal to the amount of the provisionally winning bid plus an additional amount calculated using an activity-based formula described below.²⁸⁴ We further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increment amounts if circumstances so dictated.²⁸⁵ T-Mobile supports the proposal.²⁸⁶ Leap suggests that the Commission should reduce the percentage used to determine the minimum acceptable bid as the ratio of bidder eligibility to licenses, measured in bidding units, declines.²⁸⁷ In subsequent reply comments, U.S. Cellular supports this suggestion.²⁸⁸ In light of the Bureau's discretion to change the percentages during

²⁸⁰ The changes we make to our proposal for determining minimum opening bids does not modify our proposal with respect to licenses covering the Gulf of Mexico.

²⁸¹ See Section III.D.3. "Upfront Payments and Bidding Eligibility," *supra*.

²⁸² Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 "Upfront Payments and Bidding Eligibility," *supra*.

²⁸³ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the license.

²⁸⁴ *Auction No. 66 Comment Public Notice* at 16.

²⁸⁵ *Id.*

²⁸⁶ T-Mobile Comments at 3.

²⁸⁷ Leap Comments at 11-12.

the auction, this suggestion can be taken into account without modifying the original proposal. The Bureau will consider the suggestion as it exercises its discretion during the auction.

212. Communications Advisory Counsel argues that the Commission should use a smaller percentage to determine acceptable bids for designated entities, in order to encourage designated entities to remain in the auction.²⁸⁹ Pursuant to the proposal, the Bureau has discretion to change the percentage in appropriate circumstances. It may be appropriate to reduce the percentage to encourage bidders to continue bidding on a license in certain circumstances. However, we are not persuaded that the percentage should be reduced solely for designated entities, or any other particular class of bidder. We do not believe it is necessary or appropriate to supplement the bidding credits the Commission provides to designated entities with customized bidding procedures.

213. As another alternative, Colts Neck argues that the Commission should simplify the determination of minimum acceptable bids using a simple percentage in place of an activity-based formula.²⁹⁰ It further argues that the Commission should permit bidders to bid in any amount above the minimum.²⁹¹ We decline to adopt these alternatives. Determining minimum acceptable bid amounts based in part on bidding activity on a license helps pace the auction. We cannot be certain in advance of an auction that using a simple percentage will approximate results based on activity. Accordingly, we believe it is appropriate to use an activity-based formula to determine minimum acceptable bids, as well as additional bid amounts. Finally, with respect to amounts greater than the minimum acceptable bid, providing specified bid amounts both prevents bidders from sending signals in their bids and helps bidders avoid errors when inputting their bids. The Commission has successfully used this procedure to help achieve these purposes.

214. Based on our experience in prior auctions and taking into account the comments submitted on this issue, we adopt our original proposals for Auction No. 66. The activity-based formula calculates minimum acceptable bid amounts by first calculating a percentage increment. The percentage increment for each license is a function of bidding activity on that license in prior rounds; therefore, a license that has received many bids will have a higher percentage increment than a license that has received few bids. This allows the minimum acceptable bid amounts to be tailored to the activity on a license, decreasing the number of rounds it takes for license receiving many bids to reach their final prices. Equations and examples are shown in Attachment F.

215. The calculation of the percentage increment used to determine the minimum acceptable bid amounts for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of bidders that submit bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.²⁹² The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. We proposed to initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between

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²⁸⁸ U.S. Cellular Reply Comments at 11.

²⁸⁹ CAC Comments at 7-8.

²⁹⁰ Colts Neck Comments at 3, 11.

²⁹¹ *Id.*

²⁹² For Round 1 calculations, because there is no prior round (*i.e.*, no round 0), the activity index from the prior round is set at 0.

10% and 20% depending upon the number of bids for the license. We will round the result using our standard rounding procedures.²⁹³

216. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.²⁹⁴

217. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus an additional amount. Using the activity-based formula described above, the FCC Auction system will calculate a **percentage increment** at the end of each round to determine the minimum acceptable bid amount for each license for the next round.

b. Additional Bid Amounts

218. The acceptable bid amounts in addition to the minimum acceptable bid amount for each license are calculated using a **bid increment** percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded — *e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc. We will begin the auction with a bid increment percentage of 10 percent.

219. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage increment, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau may also use its discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

4. Provisionally Winning Bids

220. At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.²⁹⁵

221. In the Auction *No. 66 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids).²⁹⁶ One commenter addressed our proposed method for breaking ties.²⁹⁷ Sprint Nextel Corporation asserts that the use of a random number generator

²⁹³ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁹⁴ See Section IV.B.5. “Bid Removal and Bid Withdrawal,” *infra*.

²⁹⁵ See Section IV.A.3. “Eligibility and Activity Rules,” *supra*.

²⁹⁶ Auction *No. 66 Comment Public Notice* at 17.

²⁹⁷ Other commenters made proposals to avoid ties which we address separately. See Section IV.B.3.a. “Minimum Acceptable Bid Amounts and Bid Increment Amounts,” *supra*, addressing comments filed by Colts Neck.

to break ties among bids amounts to using a system of random selection beyond the Commission's statutory authority to assign licenses.²⁹⁸ We disagree. Using a random number generator to break ties among bids submitted as part of a system of competitive bidding does not amount to random assignment of licenses. The statutory provision cited by Sprint Nextel Corporation, which terminates the Commission's prior authority pursuant to Section 309(i) of the Communications Act, simply does not apply to the Commission's authority to conduct competitive bidding pursuant to Section 309(j) of the Communications Act.²⁹⁹ Moreover, the random number generator only determines the provisionally winning bid after a round in which bidders submit tie bids. Bidders that lose a tie-break in one round are able to raise their bids in subsequent rounds. Consequently, a license only will be awarded to a bid that wins a tie-break if other bidders decline to raise their bids. This does not amount to a system of random selection. We did not receive any comments addressing the merits of the proposed method of breaking ties. In light of its successful use in prior auctions, we adopt the proposal.

222. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid.³⁰⁰ The tied bid with the highest random number wins the tiebreaker. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

223. During a round, a bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid), withdraw provisionally winning bids from previous rounds, remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids and withdrawing multiple provisionally winning bids (subject to the limitation on withdrawal rounds discussed below) during a round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's current activity.

224. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 66. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

225. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

226. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

²⁹⁸ Sprint Nextel Comments at 10; see 47 U.S.C. § 309(i)(5) (terminating Commission's authority to use random selection pursuant to Section 309(i) as of July 1, 1997).

²⁹⁹ Cf. 47 U.S.C. §§ 309(i) and 309(j).

³⁰⁰ A description of the L'Ecuyer algorithms can be found in L'Ecuyer, P. (1999) "Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators" *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author's website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

227. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts.³⁰¹ For each license, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box.³⁰² Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an “upload” function that allows bidders to upload text files containing bid information.

228. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for a license will be determined as described in Section IV.B.3.

229. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

5. Bid Removal and Bid Withdrawal

230. In the *Auction No. 66 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.³⁰³ With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder’s discretion. T-Mobile expressed support for our proposal concerning bid withdrawals.³⁰⁴ The Commission adopts the proposal.

231. **Procedures.** Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore we adopt them for Auction No. 66.

232. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the “withdraw bids” function in the FCC Auction System (assuming that the bidder has not already withdrawn bids in a previous round). A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). **Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended**

233. In previous auctions, we have detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals may play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, we conclude that, for Auction No. 66, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. We base our decision on this issue

³⁰¹ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3. “Upfront Payments and Bidding Eligibility,” *supra*.

³⁰² In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the license.

³⁰³ *Auction No. 66 Comment Public Notice* at 18-20.

³⁰⁴ See T-Mobile Comments, Cramton Decl. at 6.

upon our experience with bid withdrawals in prior auctions, including PCS D, E and F block and 800 MHz SMR, and FM broadcast auctions.

234. We will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

235. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid.³⁰⁵ To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a "place holder" provisionally winning bidder on the license until a new bid is submitted on that license.

236. **Calculation.** Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.³⁰⁶ If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s).³⁰⁷ In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).³⁰⁸ This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

237. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments.³⁰⁹ The Commission recently revised Section 1.2104(g)(1) to provide that in advance of each auction it shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent (3%) and twenty percent (20%).³¹⁰ Further, the rule provides that the Commission will set the percentage of withdrawn bids to be assessed as interim bid withdrawal payments prior to each auction. In the *Auction No. 66 Comment Public Notice*, we proposed

³⁰⁵ The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

³⁰⁶ 47 C.F.R. §§ 1.2104(g), 1.2109.

³⁰⁷ The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. *See* 47 C.F.R. § 1.2104(g)(1).

³⁰⁸ See following paragraph for discussion of interim bid withdrawal payments.

³⁰⁹ 47 C.F.R. § 1.2104(g)(1); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15.

³¹⁰ *See CSEA/Part 1 Report and Order* at ¶ 30.

to establish the percentage at ten percent (10%) for the AWS-1 auction and sought comment on the proposal.

238. Commenters divided on the proposed interim bid withdrawal percentage, with some arguing that it would be too high, others too low, and others supporting our proposal.³¹¹

239. We adopt our proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.³¹²

6. Round Results

240. As described above, the information available after each round will vary depending on whether the modified eligibility ratio indicates the strong likelihood of a highly competitive auction. If the modified eligibility ratio is less than three and information is withheld in accordance with the proposed as modified above, information about the results of a round will be made public after the conclusion of the round.³¹³ Specifically, after a round closes, the Bureau will compile a report listing each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the number of bids placed on the license during the round, and whether the license is FCC held. The Bureau will post the report so that it is publicly accessible. Moreover, after the auction, the Bureau will release complete reports of all bids placed during each round of the auction, including bidder identities. The Bureau will post those reports so that they are publicly accessible.

241. If, however, the modified eligibility ratio indicates the strong likelihood of a highly competitive auction (i.e., the modified eligibility ratio is three or greater), information will be provided in the same fashion typically provided after each round in the auction. Bids placed during a round will be made public at the conclusion of that round. Specifically, after a round closes, the Bureau will compile reports of all bids placed and which bidders made them, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers) and will post the reports for public access.

7. Auction Announcements

242. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

8. Maintaining the Accuracy of FCC Form 175 Information

243. As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants

³¹¹ See, e.g., MetroPCS Comments at 17 (“no compelling reason for a change” in the prior level of three percent (3%)); Verizon Wireless Comments at 9 (“too low”); and T-Mobile Comments at 17 (supports interim withdrawal payments of “10 percent of applicable bids”).

³¹² 47 C.F.R. § 1.2104(g).

³¹³ The identities of parties that are qualified to bid in Auction No. 66 will be available before the auction. Thus, bidders will know in advance of this auction the identities of the other parties against which they may be bidding in the auction.

should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auktion66@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 66 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

244. Applicants should not submit application-specific material through ECFS into the record of the proceeding concerning Auction No. 66 procedures.

V. POST-AUCTION PROCEDURES

A. Down Payments

245. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and final payments due.

246. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 66 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).³¹⁴

B. Final Payments

247. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.³¹⁵

C. Long-Form Application (FCC Form 601)

248. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for each license won through Auction No. 66. Winning bidders that are small businesses or very small businesses must demonstrate their eligibility for a small business or very small business bidding credit.³¹⁶ Further filing instructions will be provided to auction winners at the close of the auction.

249. The recently adopted *CSEA/Part 1 Report and Order* modifies the procedure by which a consortium that is a winning bidder in Auction No. 66 will apply for a license.³¹⁷ In particular, (a) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s) and, in the case of a license to be partitioned or disaggregated, the member or group filing the applicable long-form application shall provide the parties' partitioning or disaggregation agreement in its long-form application; (b) two or more consortium members seeking to be licensed together shall first form a legal business entity; and (c) any such entity must meet the applicable eligibility requirements in our rules for small business or entrepreneur status.³¹⁸ Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to understand how the members of the consortia will apply for a license in the event they are winning bidders.

³¹⁴ See 47 C.F.R. § 1.2107(b).

³¹⁵ See 47 C.F.R. § 1.2109(a).

³¹⁶ See 47 C.F.R. § 1.2112(b).

³¹⁷ See *CSEA/Part 1 Report and Order* at ¶¶ 51-52, petitions for reconsideration pending.

³¹⁸ See *id.*

D. Ownership Disclosure Information Report (FCC Form 602)

250. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 C.F.R. §§ 1.913, 1.919, and 1.2112. An ownership disclosure record is automatically created in ULS for any applicant that submits an FCC Form 175. However, winning bidders will be required to review and confirm that it is complete and accurate as of the date of filing Form 601. Further instructions will be provided to auction winning bidders at the close of the auction.

E. Tribal Lands Bidding Credit

251. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 C.F.R. §§ 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

252. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit **after** winning the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 C.F.R. § 1.2110(f)(3)(vi).³¹⁹

253. The award of tribal lands bidding credits well after the end of bidding could reduce the auction's net winning bids to less than the proceeds required by CSEA and therefore require cancellation of the auction long after the bidding has ended. In the recently adopted *CSEA/Part 1 Report and Order*, the Commission modified its tribal lands bidding credit rules to prevent this potential result. Pursuant to the new rules, the funds available for tribal lands bidding credits will be determined by the amount by which winning bids for licenses subject to the reserve price, net of discounts the Commission takes into account when reporting net bids in the public notice closing the auction, exceed the reserve price.³²⁰ In the event that the funds available are less than the full amount for which auction winners seeking tribal lands bidding credits might qualify, each applicant eligible for a tribal lands bidding credit will receive a pro rata portion of the available funds. The ratio of (a) each applicant's pro rata credit to (b) the total funds available for tribal lands bidding credits will equal the ratio of (a) the applicant's full credit (the tribal lands bidding credit for which that applicant would have qualified absent limitations resulting from the reserve price) to (b) the aggregate maximum amount of tribal lands bidding credits for which all applicants might have qualified absent limitations resulting from the reserve price. In order to assure that funds are available for all applicants seeking tribal lands bidding credits, the Commission will calculate

³¹⁹ See also 47 C.F.R. § 1.2110(f)(3)(ii) & (vii).

³²⁰ The net bids reported in the Public Notice closing the auction reflect discounts based on final information available from the applicants at the close of bidding, e.g., size-based bidding credits and, in broadcast auctions, new entrant bidding credits. However, the Commission is not able to determine tribal lands bidding credits at the close of bidding because the deadline to submit the information required for such credits is not until nearly six months after the long-form application filing deadline. See 47 C.F.R. § 1.2110(f)(3)(ii) (describing required post-auction certifications). For purposes of calculating pro-rata tribal lands bidding credits, any repayments of tribal lands bidding credit amounts pursuant to section 1.2110(f)(3)(C)(viii), as amended, are not funds available for granting other pro-rata tribal lands bidding credits. See 47 C.F.R. § 1.2110(f)(3)(C)(viii), as amended.

the aggregate maximum amount of tribal lands bidding credits for which all applicants might have qualified by assuming that any applicant seeking a tribal lands bidding credit on its long-form application will be eligible for the largest tribal lands bidding credit possible for its bid for its license, absent limitations resulting from the reserve price. The Commission will use this ratio to determine the pro rata credit awarded when the Commission grants the license.³²¹

254. The Commission recognized that it may be able to award each applicant proving eligibility for a pro rata tribal lands bidding credit a larger amount in the event that any other applicant ultimately proves to be eligible for less than the largest possible tribal lands bidding credit. Funds available for an applicant that proves to be eligible for less than the largest possible credit can be used to increase pro rata credits for other applicants. However, the largest possible pro rata credit for an applicant only can be determined after all applications seeking a tribal lands bidding credit with respect to licenses covered by a reserve price have been finally resolved.³²² Accordingly, pro rata tribal lands bidding credits will be recalculated once all such applications have been finally resolved.

255. After all such applications have been finally resolved, the Commission will recalculate the amount of pro rata credits using the aggregate amount of actual full credits – i.e., the tribal lands bidding credits for which the applicants would have qualified absent the limitations resulting from the reserve price – rather than the hypothetical maximum aggregate amount for which all applicants might have qualified. In other words, the ratio of (a) each applicant’s recalculated pro rata credit to (b) the total funds available for tribal lands bidding credits will equal the ratio of (a) the applicant’s full credit (the tribal lands bidding credit for which that applicant would have qualified absent limitations resulting from the reserve price) to (b) the aggregate amount of the actual full credits. In the event that the recalculated pro rata credit is larger than the initial pro rata credit, the Commission will award the difference. If the second calculation produces a different result from the first, it will reflect the fact that when the amount of any one applicant’s portion of the fixed funds available for tribal lands bidding credits decreases, the amounts of other applicants’ portions should increase. An applicant’s portion of the fixed funds might decrease, for example, if it reaches agreements with tribal governments regarding service for less than the full area of tribal land covered by the license. Consequently, that applicant may be eligible for a credit smaller than the largest credit possible.³²³

³²¹ When making any necessary refunds of already-made license payments, the Commission will continue to follow the usual Commission procedures, as set forth in the procedures public notice for the relevant auction. *See, e.g.*, Entertainment Unlimited, Inc. Request for Refund of Late Payment Fees for PCS Licenses Purchased in Auction No. 22, *Memorandum Opinion and Order*, 16 FCC Rcd 10030 (2001).

³²² Final resolution of all applications occurs only after any review or reconsideration of any such credit has been concluded and no opportunity remains for further review or reconsideration. It is possible that final resolution of less than all applications seeking tribal lands bidding credits may make it apparent that funds available for tribal lands bidding credits equal or exceed the full amount for which all other applications seeking tribal lands bidding credits might qualify. For example, the funds available may have been just short of the full amount for which all applicants might qualify. If one applicant withdraws its application for a tribal lands bidding credit, the funds available subsequently may exceed the full amount for which all other applicants might qualify, even though it may be some time before all other applications are finally resolved. In light of this possibility, the Commission reserved the power to award full credits when available information makes it clear that funds available exceed the full amount for which all applicants might qualify, even though all applications have not yet been fully resolved. In such circumstances, the Commission will increase the amounts of any previously awarded pro rata credits to make them full credits as well.

³²³ An applicant may be able to obtain the largest tribal lands bidding credit possible for a bid for a license even when it is not able to provide service to all of the tribal land covered by the license. If the tribal land covered by the license is less than 200 square miles, the largest tribal lands bidding credit possible for a bid for that license is not affected by the size of the area that ultimately is served. *See* 47 C.F.R. §1.2110(f)(3)(iii). Moreover, the largest (continued....)

256. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal lands bidding credits and related public notices.³²⁴ Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions> and clicking on the **Tribal Land Credits** link.

F. Default and Disqualification

257. Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction will be established in advance of the auction. Accordingly, in the *Auction No. 66 Comment Public Notice*, we proposed to set the additional default payment for the auction of AWS-1 licenses at ten percent (10%) of the applicable bid. We sought comment on our proposal.

258. Some commenters supported the proposal as setting an appropriate deterrent to default.³²⁵ Others contend that there is no reason to increase the percentage of the additional default payment from three percent (3%) as provided under prior rules.³²⁶ As these comments reflect, the primary purpose of setting the additional default payment is to deter defaults.³²⁷ The precise level of deterrence provided by

(Continued from previous page) _____

tribal lands bidding credit possible for a bid for a license is also subject to a cap based on the amount of the bid. See 47 C.F.R. § 1.2110(f)(3)(iv).

³²⁴ See generally, *Extending Wireless Telecommunications Services to Tribal Lands, Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11794 (2000), *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4778-79 ¶ 10 (2003), *Third Report and Order*, 19 FCC Rcd 17652 (2004). See also "Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Lands Bidding Credits," *Public Notice*, 16 FCC Rcd 5355 (2001); "Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands," *Public Notice*, 15 FCC Rcd 24838 (2000); "Wireless Telecommunications Bureau Announces Availability of Bidding Credits for Providing Wireless Services to Qualifying Tribal Lands: Tribal Lands Bidding Credits to be Available Beginning in Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) and in Future Auctions," *Public Notice*, 15 FCC Rcd 18351 (2000).

³²⁵ T-Mobile Comments at 9, Verizon Wireless Comments at 9.

³²⁶ MetroPCS Comments at 17-18.

³²⁷ In addition, the default payment rules create a relationship between withdrawal payments and default payments intended to encourage bidders to withdraw, and thereby permit other bidders to win the license, rather than default. MetroPCS mistakenly argues that adopting the proposal and using the same percentage for the interim withdrawal payment and the additional default payment will leave bidders indifferent to whether they withdraw or default. *Id.* at 18. This is incorrect. Commission rules in fact provide that the final liability of a defaulting bidder will exceed the liability of a bidder that withdraws an equivalent bid by the amount of the additional default payment, i.e., the final withdrawal payment equals the deficiency portion of the default payment. See, generally, 47 C.F.R. § 1.2104(g). Thus, the payments alone give bidders an incentive to withdraw bids rather than default. In addition, defaulters are prohibited from participating in future auctions until they cure their default. See 47 C.F.R. § (continued....)

any particular percentage is difficult to determine. However, continued defaults in past Commission auctions indicate that the prior level of three percent (3%) is not sufficient.³²⁸ Moreover, as noted in the *Auction No. 66 Comment Public Notice*, the public interest in rapid deployment of new advanced wireless services using licenses available for the first time in Auction No. 66 would be adversely affected by defaults.³²⁹ We continue to believe our proposal to increase the percentage from three percent (3%) to ten percent (10%) is in the public interest. We therefore adopt our proposal and set the additional default payment for the auction of AWS-1 licenses at ten percent (10%) of the applicable bid.

259. Finally, we note that in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount.³³⁰ In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.³³¹

G. Refund of Remaining Upfront Payment Balance

260. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a license in Auction No. 66 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

261. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a provisionally winning bid during the auction must submit a written refund request. If the applicant has completed the refund instructions electronically, then a written request for the refund is not necessary. If not, the request must be in writing and include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to:

Federal Communications Commission
Financial Operations Center
Auctions Accounting Group
Gail Glasser
445 12th Street, SW, Room 1-C864
Washington, DC 20554

262. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System, but bidders may also send their information by facsimile to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

(Continued from previous page) _____

1.2105(a)(2)(x). Even after curing a default, former defaulters must pay an additional upfront payment to participate in Commission auctions. See 47 C.F.R. § 1.2106(a).

³²⁸ *CSEA/Part 1 Report and Order* at ¶ 29.

³²⁹ *Auction No. 66 Comment Public Notice* at 21-22.

³³⁰ See 47 C.F.R. § 1.2109(b) and (c).

³³¹ 47 C.F.R. § 1.2109(d).

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

VI. CONTACTS

Media Contact:

For press inquiries: Chelsea Fallon (202) 418-7991

Auctions and Spectrum Access Division:

For legal questions: Scott Mackoul at (202) 418-0660

For general auction questions: Roy Knowles or Lisa Stover at (717) 338-2888

Broadband Division:

For legal and technical questions: David Hu or John Spencer at (202) 418-0200

For licensing questions: Beth Fishel at (717) 338-2649

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

Action by the Commission on April 12, 2006.

-- FCC --

Auction No. 66
FCC 06-47
Attachment A

SEE SEPARATE DOCUMENT

ATTACHMENT B

Auction No. 66 -- Advanced Wireless Services (AWS-1) Procedures

AU Docket No. 06-30

Initial Comments

1. 3G Comm, LLC
2. Advance Communications Technology, Inc.
3. Alpine Communications, LC
4. Alltel Corporation (“Alltel”)
5. Bajari, Prof. Patrick and Prof. Jeremy T. Fox (University of Michigan/NBER and University of Chicago)
6. Brusco, Prof. Sandro and Prof. Giuseppe Lopomo (SUNY-Stony Brook and Duke University) (“Brusco/Lopomo”)
7. CC Communications
8. Cameron Communications, LLC
9. Cascade Communications Company
10. Centennial Communications Corporation (“Centennial”)
11. Center on the Study of Auctions, Procurements and Competition Policy at Penn State University
12. Cingular Wireless LLC (“Cingular”)
13. Chibardun Telephone Cooperative, Inc.
14. Clear Lake Independent Telephone Company
15. Colts Neck Solutions, LLC (“Colts Neck”)
16. Columbia Capital LLC and MC Venture Partners (“Columbia/MC”)
17. Communications Advisory Counsel (“CAC”)
18. Consolidated Telecom
19. Cooper Valley Wireless
20. CTIA - The Wireless Association (“CTIA”)
21. Dubois Telephone Exchange, Inc.
22. East Buchanan Telephone Cooperative
23. Emery Telecom
24. Farmers’ and Business Mens’ Telephone Company
25. Farmers Mutual Telephone Company (“Farmers Mutual”)
26. Fidelity Communications Co.
27. Grand Mound Cooperative Telephone Association
28. Interstate Telecommunications Cooperative, Inc.
29. Kennebec Telephone Co., Inc.
30. Leap Wireless International, Inc. (“Leap”)
31. Lost Nation-Elwood Telephone Company
32. Marne & Elk Horn Telephone Company
33. MetroPCS Communications, Inc. (“MetroPCS”)
34. Miles Co-op Telephone Association
35. Milgrom, Paul and Gregory Rosston, Stanford Institute for Economic Policy Research (“Milgrom/Rosston”)
36. National Telecommunications Cooperative Association (“NTCA”)
37. NTCH, Inc. d/b/a Clear Talk (“NTCH”)
38. Nucla-Naturita Telephone Company

39. Premier Communications
40. Reuters America, LLC (“Reuters”)
41. RT Communications, Inc.
42. Rural Telecommunications Group, Inc. (“RTG”)
43. South Central Utah Telephone
44. Sprint Nextel Corporation (“Sprint Nextel”)
45. T-Mobile USA, Inc. (“T-Mobile”)
46. UBTA-UBET Communications
47. United States Cellular Corporation (“U.S. Cellular”)
48. Van Buren Telephone Co., Inc.
49. Venture Communications Corporation, Inc.
50. Verizon Wireless
51. Webster-Calhoun Cooperative Telephone Association
52. Winnebago Cooperative Telephone Association (“WCTA”)
53. Wirefree Partners III, LLC (“Wirefree”)
54. Yadkin Valley Telephone Membership Corp.

Reply Comments

1. Alltel
2. Blooston Rural AWS Coalition (“Blooston Coalition”)
3. Brusco/Lopomo
4. Centennial
5. Cingular
6. Colts Neck
7. Federal Trade Commission, Bureau of Economics (“FTC-Economics”)
8. Leap
9. Madison Dearborn Partners, LLC (“Madison Dearborn”) and TA Associates, Inc. (jointly “MDP/TA”)
10. MetroPCS
11. Milgrom/Rosston
12. NTCA
13. Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)
14. T-Mobile
15. U.S. Cellular
16. Verizon Wireless

Ex Parte Submissions and Late-Filed Comments

1. Alltel
2. Colts Neck
3. Common Cause, Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, the National Hispanic Media Coalition, and US PIRG, jointly
4. Cramton, Prof. Peter (University of Maryland, Department of Economics)
5. CTIA
6. Dobson Communications Corporation
7. Frontier Communications Corporation

8. Leap (separately and jointly with Centennial; Cingular; Columbia/MC; Cleveland Unlimited, Inc. d/b/a Revol; Dobson; 3G PCS, LLC; U.S. Cellular; MetroPCS; and RTG)
9. Madison Dearborn
10. MetroPCS (separately and jointly with Cingular; Columbia/MC; Edge Wireless Licenses, LLC; Leap; Madison Dearborn; RTG; T-Mobile; and U.S. Cellular)
11. Minority Media and Telecommunications Council
12. Royal Street Communications, LLC
13. RTG
14. T-Mobile
15. U.S. Cellular
16. United States Department of Justice (“DOJ”)
17. Verizon Wireless

ATTACHMENT C
FCC AUCTION NO. 66
SEMINAR REGISTRATION FORM

The FCC will sponsor a one-day seminar for Auction No. 66 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Monday, April 24, 2006
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Registration 10:00 a.m. - 10:30 a.m.
Seminar 10:30 a.m. - 2:00 p.m.

If hotel accommodations are needed
Please contact 888-225-5322 (option #2) for a list of hotels in the area.

To register, complete the form below and
return no later than
Thursday, April 20, 2006,
by facsimile to:

FCC Auction 66
Auctions and Spectrum Access Division
1270 Fairfield Road
Gettysburg, PA 17325-7245

Fax: 717-338-2850
Phone: 717-338-2868

Note: The seminar will also be available via webcast and may be viewed by clicking on the Auction Seminar link on the Auction No. 66 web page, <http://wireless.fcc.gov/auctions/66/>. For further information about accessing FCC webcasts, please visit <http://www.fcc.gov/realaudio/>.

I/We will attend the Auction No. 66 Seminar, scheduled for Monday, April 24, 2006.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____

ATTACHMENT D

ELECTRONIC FILING AND REVIEW OF THE SHORT-FORM APPLICATION (FCC FORM 175)

PAPERWORK REDUCTION ACT NOTICE

The Federal Communications Commission uses information collected in FCC Form 175 in determining whether applicants are legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. In addition, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses the information in determining whether the applicant is eligible for the status requested. The Commission's auctions, including the collection of information to determine applicants' qualifications to participate pursuant to Commission rules and requirements, are designed to limit the competitive bidding to qualified applicants, to deter possible abuse of the bidding and licensing process, and to enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest.

The Commission estimates that each response to this collection of information will take on average 1.5 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, DC 20554, Paperwork Reduction Project (3060-0600). PLEASE DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

The information collected in FCC Form 175 is required to be filed by all applicants to participate in a Commission auction, pursuant to Section 309(j)(5) of the Communications Act and Section 1.2105 of the Commission's rules. See 47 U.S.C. § 309(j)(5), 47 C.F.R. § 1.2105. Information collected in a submitted FCC Form 175 will be available for public inspection.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a current valid OMB control number with this notice. This collection has been assigned OMB control number 3060-0600.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

APPLICATION PREPARATION AND SUBMISSION

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **The FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Wednesday, May 10, 2006.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum license auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, an applicant should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its short-form application. Applicants may request that information

submitted not be made routinely available for public inspection following the procedures set forth in 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to FCC Form 175 and identify the information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.

Applicants may make multiple changes to their FCC Form 175 applications until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

A. Software Requirements

Applicants must meet the following minimum software requirements:

- Web Browser:
 - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2_05 installed.

or

- Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2_05.

Java Plug-In Version 1.4.2_05 is available for downloading at http://java.sun.com/products/archive/j2se/1.4.2_05/index.html (choose the JRE version).

Other browsers are not supported.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

Currently, the Apple® Mac OS® is not supported.

B. Logging On

To submit an FCC Form 175 application electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Integrated Spectrum Auction System* page, an applicant may log in to create an FCC Form 175 application using its FCC Registration Number (FRN) and password.

C. Application Filing Instructions

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.³³² Pursuant to Section 1.2105(a), FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the electronic FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the electronic FCC Form 175.

³³² See generally, 47 C.F.R. § 1.2105.

The screens comprising FCC Form 175 consist of five series, each requesting five separate types of information: 1) *Applicant Information*; 2) *License Selection*; 3) *Agreements*; 4) *Ownership*; and 5) *Certify and Submit*. In addition, *Summary* screens, a sixth series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information.

Applicants should be able to fill out Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed from the electronic FCC Form 175 in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, filers should use the contact information provided in the *Procedures Public Notice* to obtain additional assistance.

1. Applicant Information

The *Applicant Information* screens are the first series of screens in FCC Form 175. In the *Applicant Information* screens, the applicant will provide basic information including

- the applicant's legal classification, *e.g.*, individual, corporation, etc.
- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company
- the applicant's name, which will be used as the bidder name during the auction
- citizenship (for individuals), or jurisdiction of formation for legal entities
- for applicants classified as legal entities, *e.g.*, corporations and partnerships, the name of and information regarding the entity's responsible individual
- the name, address, telephone and facsimile number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175
- the names of up to three persons authorized to bid for the applicant in the auction
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims eligibility for certain types of bidding credits and the amount claimed.³³³

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

³³³ See generally, 47 C.F.R. § 1.2105(a)(2)(ii)(A).

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, in Auction No. 66 only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.

2. License Selection

The *License Selection* screens make up the second series of screens in FCC Form 175. In the *License Selection* screens, the applicant will identify the items on which the applicant may wish to bid during the auction. Applicants are not obligated to bid on all licenses selected; however, applicants will not be able to bid on licenses that they have not selected on the FCC Form 175.³³⁴ Be advised that there is no opportunity to change this list once the short-form filing deadline passes on May 10, 2006.

To participate in an auction, applicants must select at least one license. Until the applicant selects a license, the applicant cannot submit the FCC Form 175. An applicant's license selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review license selections to make sure all the licenses on which the applicant may wish to bid have been selected.

The License Selection screen contains a listing of all available licenses in the auction. Applicants can navigate within the License Selection screen by selecting the individual page links or the "Previous" and "Next" buttons above and below the list of available licenses. In addition, applicants can use pre-defined filters to narrow down the list of licenses for which they wish to select and save. Specifically, licenses can be selected by either: 1) clicking the check box next to the license name, then selecting the "Save Selected Items" button; 2) clicking the "Save all Items" button to save all available licenses; or by 3) clicking the "Save All Filtered Items" button after applying a filter. Once the applicant has successfully saved a license, the word "Saved" will appear next to the license name to confirm that it has been saved with the application.

NOTE: Licenses selected on the License Selection screen will be automatically saved when navigating to another screen within the Auction Application by using the links and buttons provided on the screen.

³³⁴ See generally, 47 C.F.R. § 1.2105(a)(2)(i).

Licenses can be removed by either: 1) clicking the check box (to uncheck) next to a previously saved license, then selecting the "Remove Selected Items" button; 2) clicking the "Remove all Items" button to remove all previously saved licenses; or by 3) clicking the "Remove All Filtered Items" button after applying a filter. Removed licenses will not have the word "Saved" next to the license name.

Applicants may view all saved licenses by either clicking the **Edit Icon** next to "View Saved Items" at the top-right corner of the list, or by clicking the "CONTINUE" button at the bottom of the page.

Once licenses have been saved, the View/Edit License Selections screen will be the first screen displayed when navigating to the License Selection step. This screen lists all licenses the applicant has selected and saved for the auction. To select a new license or remove a previously selected license, click the **Edit Icon** next to "Return to License Selection" at the top-right corner of the list. This will take you to the original *Select Licenses* screen, as described above.

3. Agreements

The *Agreements* screens are the third series of screens in Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission's rules.³³⁵

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission's rules by responding yes or no to a question asking whether the applicant has entered into partnerships, joint ventures, consortia or other agreements or understandings of any kind relating to the licenses being auctioned, including any such agreement relating to the post-auction market structure. If an applicant answers "No," the applicant will continue with the Ownership series of screens, described below. If the applicant answers "Yes," the applicant will continue with additional *Agreements* screens described here.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique.

In the event the other party to the agreement is an entity or an individual, different identifying information is required. For either entities or individuals, applicants may provide FCC Registration Numbers ("FRNs"), if available. Providing the FRN helps prevent identification errors resulting from parties having similar names or a single party using multiple names. Provision of a party's FRN is optional.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be deleted from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

³³⁵ See generally, 47 C.F.R. § 1.2105(a)(2) (viii).

The next *Agreements* screen is the *View/Edit Agreements* screen. This screen lists the agreements and parties to each agreement that already have been entered. From this screen, you have the following options:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party's name.
- Clicking the **Remove** icon next to information about a particular party to remove the corresponding party.
- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When you have identified all agreements and the parties to each agreement, click the **CONTINUE** button.

4. Ownership

The *Ownership* screens are the fourth series of screens in the FCC Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.³³⁶ Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant and parties with certain ownership interests in the applicant.³³⁷ In addition, if the applicant has claimed eligibility for bidding credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues in the *Ownership* screens.

a. Information Already on File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. To simplify filling out Form 175, an applicant's most current FCC Form 602 ownership information on file with the Commission, if in an electronic format compatible with FCC Form 175, automatically will be entered into this FCC Form 175. Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting this FCC Form 175. Applicants

³³⁶ See generally, 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110 and 1.2112.

³³⁷ See 47 C.F.R. § 1.2112.

can update the information directly in the FCC Form 175. After the deadline for filing this FCC Form 175, ownership information in a submitted FCC Form 175 will be considered to be the applicant's most current ownership information on file with the Commission.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- **Section 1.2112(a) of the Commission's rules lists the interest holders in the applicant that must be disclosed in FCC Form 175.**³³⁸
- **Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.**³³⁹

For an applicant not claiming eligibility for a bidding credit based on revenues, the initial *Ownership* screen enables the applicant to: 1) add information regarding a disclosable interest holder; 2) add information regarding the FCC-regulated businesses in which the applicant has an interest; or 3) upload ownership information from a file prepared by the applicant.

Uploading information from a file prepared by the applicant is an alternative to individually keying information into the *Ownership* screens in FCC Form 175. Applicants may upload ownership data in a text file, which will then be processed and populated into the system as the applicant's current ownership filing (provided there were no errors). This feature may benefit those applicants with large amounts of ownership data that would otherwise have to be entered into the system manually. It also may benefit those applicants who previously provided ownership data to the FCC in a similar format for other purposes, such as in connection with filing FCC Form 602 in relation to wireless services. Instructions on how to prepare and upload such a file are provided at <http://wireless.fcc.gov/auctions/ownership-upload>. After a successful upload, the *Upload Ownership Disclosure Information Confirmation* screen will appear. Applicants then may click the **CONTINUE** button, which loads the *View/Edit Ownership* screen described below.

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- If an application includes one or more disclosable interest holders with an indirect ownership in the applicant,³⁴⁰ the application must include an attachment regarding the relationship between the indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owners to the applicant, *e.g.*, indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.³⁴¹ One attachment connecting all indirect owners to the applicant is sufficient; a separate attachment for each indirect owner is not required. An overview of the

³³⁸ 47 C.F.R. § 1.2112(a). Section 1.2105 requires the disclosure on the short form of applicant ownership information set forth in Section 1.2112.

³³⁹ 47 C.F.R. § 1.2112(a)(7).

³⁴⁰ See 47 C.F.R. § 1.2112(a)(6).

³⁴¹ *Id.*

ownership connections is sufficient; the attachment does not need to duplicate all the detailed information already provided in the FCC Form 175.

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant. In some cases, *e.g.*, circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, *e.g.*, directors and officers of an entity seeking revenue-based bidding credits,³⁴² a disclosable interest holder may have a 0% percent of interest held in the applicant.
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a Disclosable Interest Holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.
- To simplify filling out the FCC Form 175, applicants can click on the **select business(es) already submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another Disclosable Interest Holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes Ownership information already entered in FCC Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into three groups:

- Disclosable Interest Holders of this Applicant
- FCC Regulated Businesses of this Applicant
- Affiliates of this Applicant

To view the detailed information submitted regarding the applicant, a disclosable interest holder, FCC-regulated business, or an affiliate, click on the relevant party’s name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder’s information.

³⁴² See 47 C.F.R. § 1.2112(b)(1)(i).

d. Bidding Credit Revenue Information

If the applicant has claimed eligibility for a bidding credit based on revenues attributable to the applicant and related parties, the first *Ownership* screen will request relevant information regarding the applicant's revenues. The subsequent screen will request which of the two sources of financial information authorized by Section 1.2110 (n) the applicant used for the revenue information.³⁴³

Applicants claiming eligibility for a bidding credit based on revenues are required to provide revenue information separately and in the aggregate for the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests. In addition, if the applicant is a consortium of small businesses, the information must be provided with respect to each member comprising the consortium.³⁴⁴ The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.³⁴⁵ Form 175 screens request information regarding the applicant, disclosable interest holders, and affiliates of the applicant. Accordingly, information that Commission rules require be disclosed regarding controlling interests and affiliates of controlling interests that are not disclosable interest holders should be disclosed in screens requesting information regarding affiliates of the applicant.

Following the first two screens, the subsequent screen will be similar to the initial *Ownership* screen described above, with one addition. In addition to being able to add disclosable interest holders and FCC-regulated business, applicants that claim eligibility for bidding credits based on revenues also will have an option to add information regarding affiliates, including their revenues, that are not disclosable interest holders.³⁴⁶

Applicants that claim eligibility based on revenues attributable to the applicant and related parties will be requested to provide revenue information for each disclosable interest holder. With respect to disclosable interest holders that are affiliates or controlling interests of the applicant, applicants will fill out two screens similar to the two described above with respect to the applicant, *i.e.*, one screen requesting the relevant information and a second screen regarding the source of the revenue information.

However, not all disclosable interest holders that must be listed in Form 175 pursuant to Section 1.2112(a) are affiliates of the applicant, controlling interests of the applicant, or affiliates of the applicant's controlling interests.³⁴⁷ Consequently, applicants claiming eligibility for a bidding credit based on revenues may not need to provide revenue information for every disclosable interest holder. Accordingly, applicants may indicate that no revenue information is required with respect to the relevant disclosable interest holder on the first screen requesting revenue information for that disclosable interest holder. To do so, check the box indicating that the disclosable interest holder is **not** an affiliate or a controlling interest within the meaning of the

³⁴³ 47 C.F.R. § 1.2110(n).

³⁴⁴ See 47 C.F.R. § 1.2112(b)(1)(iii).

³⁴⁵ See 47 C.F.R. § 1.2110(c)(5).

³⁴⁶ See 47 C.F.R. § 1.2112(b)(1)(iii).

³⁴⁷ Compare 47 C.F.R. 1.2110(c)(2) (definition of controlling interests) and (c)(5)(definition of affiliate) with 47 C.F.R. 1.2112(a) (describing disclosable interest holders).

Commission's rules and, therefore, no revenue information for the disclosable interest holder will be provided.

In addition, an applicant may have affiliates that are not disclosable interest holders. To disclose information regarding such affiliates and their revenues required pursuant to Commission rule,³⁴⁸ applicants can click on the **ADD AFFILIATE** button on the initial *Ownership* screen. Applicants also can click on the **Add Affiliate to Applicant** link on the *View/Edit Ownership Disclosure Information* screen to disclose information regarding affiliates and their revenues.

Applicants providing information regarding an affiliate must provide the name of the affiliate and the affiliate's principal business. To simplify filling out Form 175, applicants can click on the **select business(es) already submitted** link when entering an affiliate that previously was entered as an FCC-regulated business for the applicant or a Disclosable Interest Holder. Applicants will fill out two screens similar to the two described above with respect to the affiliate, *i.e.*, one screen requesting the relevant information and a second screen regarding the source of the revenue information.

Finally, applicants claiming eligibility for bidding credits based on revenues attributable to the applicant and related parties will be asked to confirm that they have provided information with respect to all of the relevant parties, *i.e.*, the applicant; each of the applicant's officers and directors; each of the applicant's other controlling interests; each of the applicant's affiliates; and for each affiliate of the applicant's controlling interests, including its officers and directors.³⁴⁹

5. Summary

The *Summary* screens are the fifth series of screens in FCC Form 175. The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's FCC Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one. Here is what happens if you click **VIEW/EDIT** for each series:

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing what you entered for each data entry field. To change any data item, click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for License Selection takes you to the *View/Edit License Selection* screen discussed above in the License Selection section.
- Clicking **VIEW/EDIT** for Agreements takes you to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes you to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

³⁴⁸ See 47 C.F.R. § 1.2112(b)(1)(iii).

³⁴⁹ *Id.*

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters any errors that must be corrected before submitting the application, the error(s) will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters any apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

Each applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check is provided to assist applicants in completing FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided in the FCC Form 175 is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter any errors, a box will appear displaying the message “**No Errors found - You may continue to Certify and Submit.**” Applicants may then click the **CONTINUE TO CERTIFY** button.

6. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, additional information can be provided in an attachment.

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission’s rules or procedures, the applicant should identify the “Type” of attachment as a “Waiver” to facilitate prompt processing. Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

A list of any attachments already uploaded along with the applicant’s FCC Form 175 appears at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats-- including (but not limited to) Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text--and must verify that the files contain all exhibit information. Files may be no larger than 10 Mb. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended. Files must not be password-protected.

7. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission’s competitive bidding processes.³⁵⁰

³⁵⁰ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

The first *Certify and Submit* screen requires each applicant to indicate whether the applicant, any affiliate, any controlling interest, and any affiliate of a controlling interest have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.³⁵¹ Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.³⁵²

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application. Any auction short-form application must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.³⁵³

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.³⁵⁴ Applicants are reminded that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Wednesday, May 10, 2006. Late applications or unconfirmed submissions of electronic data will not be accepted.

³⁵¹ See 47 C.F.R. § 1.2105(a)(2)(xi).

³⁵² See 47 C.F.R. § 1.2106(a).

³⁵³ See 47 C.F.R. § 1.917.

³⁵⁴ See 47 C.F.R. § 1.2105(a)(2)(v).

8. **Withdrawing an Application Before the Short-Form Filing Deadline and Updating Existing Applications**

a. **Withdrawing an Application**

If you wish to withdraw a submitted application before the short-form filing deadline, click on the **Withdraw Application** icon on the *Auction Application Manager Create or Review Auction Applications* page and confirm that you want to withdraw your application. If you subsequently decide to file an application, you will have to re-enter all previously-submitted data. Applications may not be withdrawn after the short-form application filing deadline.

b. **Updating Existing Applications**

Once you have logged into the Auctions Application Manager, the *Create or Review Auction Applications* page displays any application you have created or submitted within a filing window. **Note:** This page shows the application status, the date and time the application was last updated; and the date and time the application was last submitted. You may use this page as a reference to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing application, click its auction number. This produces the application's *Summary* page and places you in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their FCC Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

After the short-form application filing deadline (6:00 p.m. ET May 10, 2006), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or increase its bidding credit).³⁵⁵

9. **Upfront Payment Calculator and Form 159**

You may access the **Upfront Payment Calculator and Form 159** from the *Create or Review Auction Applications* page and from the *Auction Application Submit Confirmation* page. When you click the **Upfront Payment Calculator and Form 159** icon or link, a page will be displayed where you can determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, you may click the **Form 159** button to obtain the FCC Form 159.

10. **Refund of Upfront Payment**

On *My Auctions* page, click on the **See Wire Transfer for Refund Purposes** link to provide your wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit upon receipt of a written refund request.

³⁵⁵ See 47 C.F.R. § 1.2105(b).

D. Application Review

Once the FCC has completed the short-form application review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page to start your search.

E. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

FCC Technical Support can also be contacted electronically by filling out a help request form at <https://esupport.fcc.gov/request.htm>. On the Submit Help Request page, select **Integrated Spectrum Auction System (ISAS)** from the "FCC System" drop-down.

ATTACHMENT E

AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2003 Edition)

Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 66. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the Short Form Application (FCC Form 175) are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358405"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).

- 21 Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant’s ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
- 24A Payment Type Code - Enter “A66U”
- 25A Quantity - Enter the number “1”
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number “66” (indicating Auction No. 66).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

Winning Bidder Requirements, Down Payments and Final Payments

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

ATTACHMENT F

SMOOTHING FORMULA EQUATIONS

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bidders submitting bids on the licenses in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = percentage increment for the next round (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

X_{i+1} = dollar amount associated with the percentage increment

Y_i = provisionally winning bid amount from the current round

Examples

License 1

C=0.5, N = 0.1, M = 0.2

Round 1 (2 bidders submitting bids, provisionally winning bid = \$1,000,000)

1. Calculation of percentage increment for round 2 using the smoothing formula:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2 from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid amount for round 2 = \$1,200,000

Round 2 (3 bidders submitting bids, provisionally winning bid = \$2,000,000)

1. Calculation of percentage increment for round 3 using the smoothing formula:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3 from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid amount for round 3 = \$2,400,000

Round 3 (1 bidder submitting bids, provisionally winning bid = \$2,400,000)

1. Calculation of percentage increment for round 4 using the smoothing formula:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$I_4 =$ The smaller of $((1 + 1.5) * 0.1) = 0.25$ or 0.2 (the maximum percentage increment)

2. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4 from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid amount for round 4 = \$2,880,000

ATTACHMENT G

SUMMARY LISTING OF DOCUMENTS ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULE

Commission Decisions

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7255 ¶¶ 48-55 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd 4277 (1995), *Memorandum Opinion and Order*, 11 FCC Rcd 15374 (1996).

Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970 (1997), *Memorandum Opinion and Order*, 13 FCC Rcd 23755 (1998).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); *Notice of Apparent Liability for Forfeiture of US West Communications, Inc., Order*, 14 FCC Rcd 8816 (1999).

Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8305 (1998); *Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78 ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

Wireless Telecommunications Bureau Decisions

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-13, *Order*, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

Public Notices

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, 11 FCC Rcd 7031 (Auc. Div. 1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

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How to Obtain Copies of the Anti-Collusion Decisions

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 (telephone) or <http://www.bcpweb.com>.